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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

RIN 3209–AA15

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises certain delegations of authority related to ethics from the Secretary of Agriculture and changes the USDA Designated Agency Ethics Official from the Director, Office of Ethics, to the Deputy Assistant Secretary for Administration, and further designates the Director, Office of Ethics, as the USDA Alternate Agency Ethics Official.

EFFECTIVE DATE: Effective October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Raymond J. Sheehan, Director, Office of Ethics, U.S. Department of Agriculture, Room 348–W—Stop 0122, 1400 Independence Avenue, SW., Washington, DC 20250–0122, telephone (202) 720–2251.

SUPPLEMENTARY INFORMATION:

I. Background

This amendment revises the current language of sections 2.24, 2.87, and 2.95 of part 2 of title 7 of the Code of Federal Regulations, to change the delegation of authority to serve as Designated Agency Ethics Official (DAEO) for the Department of Agriculture (USDA), from the position of Director, Office of Ethics, to the position of Deputy Assistant Secretary for Administration, and to designate the Director, Office of Ethics, as Alternate Agency Ethics Official.

Paragraph (a)(13) of section 2.24 addresses delegations from the Secretary to the Assistant Secretary for Administration relating to ethics. The regulation currently limits the authority of the Assistant Secretary for Administration over the ethics program to that of general supervision with no authority over the functions exercised by the Director, Office of Ethics, pursuant to that officer's delegation of DAEO authority. As amended, all references to the ''Director, Office of Ethics'' would be deleted and replaced by the ''Deputy Assistant Secretary for Administration.''

Section 2.87 relates to delegations of authority from the Assistant Secretary for Administration to the Deputy Assistant Secretary for Administration. There currently exists no reference in this section to any ethics responsibilities. Section 2.95 concerns delegations by the Assistant Secretary for Administration to the Director, Office of Ethics. That section reflects the current designation of the Director, Office of Ethics as DAEO. This amendment would delegate the DAEO function to the Deputy Assistant Secretary for Administration by adding that delegation to section 2.87 and removing the current DAEO delegation from section 2.95. This amendment also would designate the Director, Office of Ethics, as the Alternate Ethics Official.

II. Matters of Regulatory Procedure

Administrative Procedure Act

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**.

Congressional Review

The Department has determined this rulemaking is not a rule as defined in 5 U.S.C. 804, and, thus, does not require review by Congress. This rulemaking applies only to delegations of authority and responsibility to the employees and officers of the Department of Agriculture.

Executive Orders Nos. 12866 and 12988

Since this rule relates to Department personnel, it is exempt from the provisions of Executive Orders Nos. 12866 and 12988.

Regulatory Flexibility Act

In addition, this action is not a rule as defined by Public Law No. 96–354, the Regulatory Flexibility Act, and, thus, is exempt from the provisions of that Act.

Paperwork Reduction Act

The Department has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Environmental Impact

This decision will not have a significant impact upon the quality of the human environment or the conversation of energy resources.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Dated: October 17, 2002.

Ann M. Veneman,

Secretary of Agriculture.

Accordingly, amend part 2, title 7, Code of Federal Regulations as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

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

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. Paragraph (a)(13) of section 2.24 is revised to read as follows:

§ 2.24 Assistant Secretary for Administration.

a. * * *

* * * * *

(13) *Related to ethics.* The Ethics function in the U.S. Department of Agriculture is under the authority of the Assistant Secretary for Administration for purposes of general supervision only. The Assistant Secretary does not have any authority over the functions exercised by the Deputy Assistant Secretary for Administration, pursuant to the Deputy Assistant Secretary's responsibilities as Designated Agency Ethics Official under the Office of

Government Ethics regulations at 5 CFR part 2638.

* * * * *

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

3. Section 2.87 is revised to read as follows:

§ 2.87 Deputy Assistant Secretary for Administration.

(a) *Delegations.* Pursuant to the Office of Government Ethics regulations at 5 CFR part 2638. The Deputy Assistant Secretary for Administration shall be the USDA Designated Agency Ethics Official and shall exercise all authority pursuant to the Office of Government Ethics regulations at 5 CFR part 2638.

(b) Pursuant to § 2.24(a), subject, to reservations in § 2.24(b), the following delegation of authority is made by the Assistant Secretary for Administration to the Deputy Assistant Secretary for Administration, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Administration.

4. Section 2.95 is revised to read as follows:

§ 2.95 Director, Office of Ethics.

The Director, Office of Ethics, shall be the USDA Alternate Agency Ethics Official, pursuant to 5 CFR 2638.202, and shall exercise the authority reserved to the Designate Agency Ethics Official under 5 CFR part 2638 only in the absence or unavailability of the Designated Agency Ethics Official.

[FR Doc. 02–27184 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1435 and 1436

RIN 0560–AG73

2002 Farm Security and Rural Investment Act of 2002 Sugar Programs and Farm Facility Storage Loan Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule that was published in the **Federal Register** on Monday, August 26, 2002 (67 FR 54926). Several sections of the regulation were incorrectly numbered in the final rule. The corrections are provided in this document.

EFFECTIVE DATE: October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, 202–205–5851, email: *tom_witzig@wdc.fsa.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: In the final rule published on August 26, 2002, (67 FR 54926) make the following corrections.

§ 1435.308 [Corrected]

1. On page 54934, in the third column, under § 1435.308, paragraphs (a)(3), and (a)(4) are redesignated as paragraphs (b) and (c), respectively.

2. On page 54935, in the first column, under § 1435.308, paragraphs (a)(5), (b) and (c) are redesignated as paragraphs (d), (e) and (f), respectively.

§ 1436.37 [Corrected]

3. On page 54939, in the third column, § 1436.37 is redesignated as § 1436.19.

Signed in Washington, DC, on October 21, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–27228 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

10 CFR Part 710

RIN 1992–AA30

Eligibility for Security Police Officer Positions in the Personnel Security Assurance Program

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its regulations to allow newly hired individuals in security police officer positions who have received an interim Q access authorization through DOE's Accelerated Access Authorization Program to be eligible to hold a Personnel Security Assurance Program (PSAP) position.

EFFECTIVE DATE: This final rule will be effective November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff, Office of Security, Department of Energy, SO–112, 1000 Independence Ave., SW., Washington, DC 20585, 301–903–4800.

SUPPLEMENTARY INFORMATION:

I. Background

The Personnel Security Assurance Program (PSAP) is a special access authorization program, established by DOE pursuant to the Atomic Energy Act of l954, to assure the reliability of individuals whose positions: (1) Afford direct access to Category I quantities of special nuclear material (including guarding and transporting special nuclear material), (2) are identified as nuclear material production reactor operators, or (3) have the potential for causing unacceptable damage to national security. The PSAP regulations are at 10 CFR part 710, subpart B and currently require an employee or applicant for any PSAP position to have a Q access authorization based upon a full background investigation before being granted a PSAP access authorization. 10 CFR 710.60(c).

On April 4, 2002, DOE proposed a rule to amend 10 CFR 710.60 to permit security police officers (SPOs) to be eligible for a PSAP access authorization based on an interim access authorization obtained through the Department's Accelerated Access Authorization Program (AAAP) (*see* 67 FR 16061). DOE explained in the notice of proposed rulemaking (NOPR) that the events of September 11, 2001, have made use of the AAAP to expedite SPO screening vitally important, particularly because of the need for DOE to increase the size of its protective forces.

The AAAP was implemented to assist DOE managers and DOE contractors who request interim access authorization for individuals pursuant to DOE Order 472.1B, DOE Manual 472.1–1B, and related DOE directives. Entry into the AAAP is voluntary and written consent of the employee or applicant is required. The AAAP includes the following screening elements:

(1) Testing for the use of illegal drugs in accordance with the provisions of DOE directives implementing Executive Order 12564 or, for contractor employees, the provisions of 10 CFR part 707, ''Workplace Substance Abuse Programs at DOE Sites'';

(2) Completion of a National Agency Check; for contractor employees, this includes checks of Office of Personnel Management security indices, Department of Defense clearance indices, Federal Bureau of Investigation name and fingerprint indices, and Credit Bureau files, and for Federal

employees, the National Agency Check also includes written inquiries to past employers, references given by the individual, and any educational institutions attended recently;

(3) A psychological assessment using a standard psychological screening test to determine if the individual has any psychological/behavioral condition which might call into question the individual's reliability, judgment, and trustworthiness;

(4) A controlled counterintelligence-scope polygraph examination in accordance with 10 CFR part 709; and

(5) Review of the applicant's completed ''Questionnaire for National Security Positions'' (Standard Form 86).

With the exception of the AAAP-specific psychological/behavioral evaluation, the AAAP screening elements are required elements for anyone in a PSAP position. Thus, as explained in the NOPR, the rule change proposed by DOE would enhance the ability of SPOs who have completed their required training and received an interim access authorization to assume PSAP duties prior to completion of their background investigation. Due to the controlled nature and continuous oversight of SPO positions, there is no appreciable risk to allowing assumption of PSAP duties by SPOs prior to completion and adjudication of the background investigation.

DOE received no comments in response to the NOPR.

II. Summary of Rule Amendment

Having received no public comment, DOE today is adopting the proposed rule as final without change.

This final rule amends section 710.60 of the PSAP regulations to permit newly hired SPOs who obtain interim access authorization through the AAAP to assume their PSAP duties before completion of the ongoing full background investigation. When effective, this provision will allow newly hired SPOs who obtain an interim access authorization through the AAAP and successfully complete the PSAP requirements to assume their PSAP duties immediately upon completing the 9-week basic SPO training course.

This final rule also adds to section 710.54 of the PSAP regulations a definition of the term ''Accelerated Access Authorization Program'' that contains the central elements of the AAAP.

III. Regulatory and Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a) and section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule would not directly regulate small businesses or other small entities. It would apply only to individuals who apply for SPO positions at sites owned or operated by DOE or DOE contractors. DOE management and operating contractors are not small businesses. Accordingly, DOE certified in the NOPR that the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. DOE today affirms that certification.

D. Review Under the Paperwork Reduction Act

No new collection of information would be imposed by this proposed rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule would amend DOE's regulations governing access to PSAP and would not change the environmental effect of the PSAP regulations. Therefore, this rulemaking is covered under the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999) requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have ''federalism implications.'' Policies that have federalism implications are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and determined that 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. No further action is required by the Executive Order.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect them. This rule does not contain any federal mandate, so these requirements do not apply.

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

Section 654 of the Treasury and General Government Appropriations Act of 1999, Pub. L. 105–277, requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

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

Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Government employees, Nuclear materials, Revocation, Security measures, Suspension.

Issued in Washington, on October 16, 2002.

Spencer Abraham,

Secretary of Energy.

For the reasons set forth in the preamble, part 710 of chapter III of title 10, Code of Federal Regulations is amended, as set forth below:

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 710 is revised to read as follows:

Authority: 42 U.S.C. 2165; 2201; 5815; 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* E.O. 10450, 3 CFR 1949–1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 Comp., p. 398, as amended, 3 CFR Chap. IV.

2. Section 710.54 of subpart B is amended by adding, in alphabetical order, the definition of ''Accelerated Access Authorization Program'' to read as follows:

§ 710.54 Definitions.

* * * * *

Accelerated Access Authorization Program means the DOE program for granting interim access to classified matter and special nuclear material based on a drug test, a National Agency Check, a psychological assessment, a counterintelligence-scope polygraph examination in accordance with 10 CFR part 709, and a review of the applicant's completed ''Questionnaire for National Security Positions.'' (Standard Form 86).

* * * * *

3. Section 710.60 of subpart B is amended by revising paragraph (c) to read as follows:

§ 710.60 DOE security review and clearance determination.

* * * * *

(c) *Review for initial PSAP access authorization.* An initial PSAP access authorization requires the applicant or employee to have a DOE Q access authorization based upon a background investigation, except for Security Police Officers who may be granted PSAP access authorization based on an interim Q access authorization obtained through the Accelerated Access Authorization Program. The adjudication and determination for a PSAP access authorization shall be based upon a review of security information, including the results of the background investigation (or Accelerated Access Authorization Program screening elements in the case of Security Police Officers) and the information provided by management and medical sources.

* * * * *

[FR Doc. 02–27205 Filed 10–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM232; Special Conditions No. 25–221–SC]

Special Conditions: Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 Series AirPlanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Garrett Aviation Services. These airplanes, as modified, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Innovative Solutions & Support Air Data Display Units (ADDU) with the IS&S Air

Data Sensor and an analog interface unit (AIU) that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These 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: The effective date of these special conditions is October 15, 2002. Comments must be received on or before November 27, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM232, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Directorate at the above address. All comments must be marked: *Docket No. NM232.* Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

FAA's Determination as to Need for Public Process

The FAA has determined that notice and opportunity for prior public comment are unnecessary in accordance with 14 CFR 11.38, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance. However, the FAA invites interested persons to participate in this rulemaking by submitting 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 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

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 August 22, 2002, Garrett Aviation Services, 1200 North Airport Drive, Capital Airport, Springfield, IL 62707, applied for a supplemental type certificate (STC) to modify Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes approved under Type Certificate No. A33EU. The Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplane is a small category airplane powered by two Airesearch Manufacturing Company TFE731–2–1C turbofan engines and having a maximum takeoff weight of 18,300 pounds. This airplane operates with a 2-pilot crew and can hold up to 9 passengers. The modification incorporates the installation of Innovative Solutions & Support Air Data Display Units (ADDU) and an analog interface unit (AIU). The ADDU replaces the existing analog flight instrumentation and provides additional functional capability and redundancy in the system. The AIU is a digital-to-analog adapter used to adapt signals driving the existing Sperry Flight Guidance Computer. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1991, Garrett Aviation Services must show that the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A33EU, 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 original type certification basis for the modified Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes includes 14 CFR part 25 as amended by Amendments 25–1 through 25–20, dated February 1, 1964, except for special conditions and exceptions noted in Type Certificate Data Sheet (TDCS) A33EU.

If the Administrator finds that the applicable airworthiness regulations (that is, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirement of part 36, including Amendment 36–1.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Garrett Aviation Services will incorporate systems comprised of dual Air Data Display Units and an analog interface unit that will perform critical functions. These systems have the potential to be vulnerable to high-intensity radiated

fields (HIRF) external to the airplane. The current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Garrett Aviation Services. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1, or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table below are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz;	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz– 40	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Garret Aviation Services. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Garrett Aviation Services. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

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 Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Garrett Aviation Services.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. *For the purpose of these special conditions, the following definition applies: Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 15, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27379 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM238; Special Conditions No. 25–222–SC]

Special Conditions: Avions Marcel Dassault—Breguet Aviation, Falcon 10; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Avions Marcel Dassault-Breguet Aviation, Falcon 10 airplanes modified by Garrett Aviation Services. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of the Collins ADC–87A Air Data Computer system that performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of this system from the effects of high-intensity radiated fields (HIRF). These 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: The effective date of these special conditions is October 18, 2002. Comments must be received on or before November 27, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM238, 1601 Lind Avenue SW., Renton Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM238. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification, and thus delivery, of the affected airplane. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, 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 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, 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 August 13, 2001, Garrett Aviation Services, 1200 North Airport Drive, Capital Airport, Springfield, IL 62707, applied for a supplemental type certificate (STC) to modify Avions Marcel Dassault -Breguet Aviation (AMD/BA), Falcon 10 airplanes approved under Type Certificate No. A33EU . The AMD/BA Falcon 10 is a small transport category airplane, powered by two Airesearch Manufacturing Company Model TFE731–2–1C turbofan engines, with a maximum takeoff weight of 18,300 pounds. This airplane operates with a 2-pilot crew and can hold up to 9 passengers. The modification incorporates the installation of single or dual Collins ADC–87A Air Data Computers. The ADC–87A is installed as a new #2 ADC or as a replacement for the existing Collins ADC–80K Air Data Computer, while also providing additional functional capability and redundancy in the system. The ADC–87A is a microprocessor-based digital computer used to adapt signals driving the existing Collins FCS–80 Flight Guidance System. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101 (amendment 21–69, effective September 16, 1991), Garrett Aviation Services must show that the AMD/BA Falcon 10 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A33EU, 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 certification basis for the modified AMD/BA Falcon 10 airplanes includes 14 CFR part 25, dated February 1, 1965, as amended by amendments 25–1 through 25–20, except for special conditions and exceptions noted in Type Certificate Data Sheet (TCDS) A33EU.

If the Administrator finds that the applicable airworthiness regulations (that is, part 25, as amended) do not contain adequate or appropriate safety standards for the AMD/BA Falcon 10 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 AMD/BA Falcon 10 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, including amendment 36–1.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the airplane's 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 Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, 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).

Novel or Unusual Design Features

As noted earlier, the AMD/BA Falcon 10 airplanes modified by Garrett Aviation Services will incorporate single or dual Collins ADC–87A Air Data Computers that will perform critical functions. These systems have the potential to be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards that address the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the AMD/BA Falcon 10 airplanes modified by Garrett Aviation Services. These special conditions require that the Collins ADC–87A Air Data Computers, which perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10KHz to 18GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to AMD/BA Falcon 10 airplanes modified by Garret Aviation Services. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A33EU to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1) (amendment 21–69, effective September 16, 1991).

Conclusion

This action affects only certain novel or unusual design features on the AMD/BA Falcon 10 airplanes modified by Garrett Aviation Services. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

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 Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Avions Marcel Dassault—Breguet Aviation, Falcon 10 airplanes modified by Garrett Aviation Services.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or

cause a failure condition that would prevent the continued safe flight and landing of the airplane.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27377 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–13–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 in dogs, by oral chewable tablet, for the control of postoperative pain associated with soft tissue and orthopedic surgery.

DATES: This rule is effective October 28, 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 St., New York, NY 10017–5755, filed a supplement to NADA 141–111 for veterinary prescription use of RIMADYL (carprofen) Chewable Tablets for the control of postoperative pain associated with soft tissue and orthopedic surgery in dogs. The supplemental NADA provides for use of carprofen chewable tablets in dogs for the control of postoperative pain associated with soft tissue and orthopedic surgery. The supplemental application is approved as of August 21, 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.

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 (b), (d)(1), and (d)(2) to read as follows:

§ 520.309 Carprofen.

* * * * *

(b) *Sponsor*. See No. 000069 in § 510.600(c) of this chapter.

* * * * *

(d) * * * (1) *Amount*. 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.

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

* * * * *

Dated: September 30, 2002.

Stephen F. Sundlof,

Center for Veterinary Medicine.

[FR Doc. 02–27266 Filed 10–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9019]

RIN 1545–BA25

Unit Livestock Price Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the use of the unit-livestock-price method of accounting. The regulations affect livestock raisers and other farmers that elect to use the unit-livestock-price method. These regulations provide rules relating to the annual reevaluation of unit prices and the depreciation of livestock raised for draft, breeding, or dairy purposes.

EFFECTIVE DATE: These regulations are effective October 28, 2002.

FOR FURTHER INFORMATION CONTACT: A. Katharine Jacob Kiss at (202) 622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 471 of the Internal Revenue Code (Code). A notice of proposed rulemaking (REG–125626–01, 2002–9 IRB 604) was published in the **Federal Register** (67 FR 5074) on February 4, 2002. No public hearing was requested or held. One comment responding to the notice of proposed rulemaking was received. The proposed regulations are adopted by this Treasury decision.

Explanation of Provisions

The unit-livestock-price method provides for the valuation of different classes of animals in inventory at a standard unit price for each animal within a class. A taxpayer using the unit-livestock-price method must annually reevaluate its unit prices and must adjust the prices upward to reflect increases in the costs of raising livestock. The regulations allow taxpayers to both increase and decrease unit prices without obtaining the consent of the Commissioner. The regulations also clarify that a livestock raiser that uses the unit-livestock-price method may elect to remove from inventory after maturity an animal raised for draft, breeding, or dairy purposes and treat the inventoriable

cost of such animal as an asset subject to depreciation.

In the notice of proposed rulemaking, the IRS and Treasury Department requested comments on whether safe harbor unit prices should be made available to taxpayers using the unit-livestock-price method and, if so, what index should be used. The sole commentator requested that safe harbor unit prices should be made available, and suggested using the price index developed by a local state extension service for the safe harbor unit prices. Due to the lack of widespread interest in developing and using safe harbor unit prices, the final regulations do not adopt that suggestion.

Effective Date

These regulations are applicable to taxable years ending after October 28, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. 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 on small entities a collection of information requirement, 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 Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is A. Katharine Jacob Kiss, Office of Associate Chief Counsel (Income Tax and Accounting). 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.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.471–6 also issued under 26 U.S.C. 471. * * *

Par. 2. Section 1.471–6 is amended as follows:

1. In paragraph (c), the last sentence is removed.

2. Paragraph (f) is revised.

3. In paragraph (g), the first sentence is amended by removing the language ''capital assets'' and adding in its place ''property used in a trade or business.''

The revisions read as follows:

§ 1.471–6 Inventories of livestock raisers and other farmers.

* * * * *

(f) A taxpayer that elects to use the ''unit-livestock-price method'' must apply it to all livestock raised, whether for sale or for draft, breeding, or dairy purposes. The inventoriable costs of animals raised for draft, breeding, or dairy purposes can, at the election of the livestock raiser, be included in inventory or treated as property used in a trade or business subject to depreciation after maturity. *See* § 1.263A–4 for rules regarding the computation of inventoriable costs for purposes of the unit-livestock-price method. Once established, the methods of accounting used by the taxpayer to determine unit prices and to classify animals must be consistently applied in all subsequent taxable years. A taxpayer that uses the unit-livestock-price method must annually reevaluate its unit prices and adjust the prices either upward to reflect increases, or downward to reflect decreases, in the costs of raising livestock. The consent of the Commissioner is not required to make such upward or downward adjustments. No other changes in the classification of animals or unit prices may be made without the consent of the Commissioner. *See* § 1.446–1(e) for procedures for obtaining the consent of the Commissioner. The provisions of this paragraph (f) apply to taxable years ending after October 28, 2002.

* * * * *

Approved: October 2, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 02–27158 Filed 10–25–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 861

RIN 0701–AA67

Department of Defense Commercial Air Transportation Quality and Safety Review Program

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force has revised the Department of Defense Commercial Transportation Quality and Safety Review Program. This was necessary to reflect current and anticipated policies.

EFFECTIVE DATE: October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Merlin Lyman, 618–229–4801.

SUPPLEMENTARY INFORMATION: This action is authorized by 10 U.S.C. 8013 and 10 U.S.C. 2640. The Department of the Air Force has determined that this rule is not a major rule because it will not have an annual effect on the economy of $100 million or more. The Secretary of the Air Force has certified that this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 to 612, because this rule does not have a significant economic impact on small entities as defined by the Act, and does not impose any obligatory information requirements beyond internal Air Force use.

List of Subjects in 32 CFR Part 861

Administrative practice and procedure, Air carriers, Aviation safety, Military air transportation.

For the reasons set forth in the preamble, the Air Force has revised 32 CFR Part 861 to read as follows:

PART 861—DEPARTMENT OF DEFENSE COMMERCIAL AIR TRANSPORTATION QUALITY AND SAFETY REVIEW PROGRAM

Sec.
861.1 References.
861.2 Purpose.
861.3 Definitions.
861.4 DOD commercial air transportation quality and safety review program.
861.5 DOD Commercial Airlift Review Board procedures.
861.6 DOD review of foreign air carriers.
861.7 Disclosure of voluntarily provided safety-related information.

Authority: 10 U.S.C. 2640, 8013.

§ 861.1 References.

The following references apply to this part:

(a) 10 U.S.C. 2640, Charter Air Transportation of Members of the Armed Forces.

(b) Department of Defense Directive 4500.53, *Department of Defense Commercial Air Transportation Quality and Safety Review Program.*

§ 861.2 Purpose.

Department of Defense Directive 4500.53, *Department of Defense Commercial Air Transportation Quality and Safety Review Program,* charges the Commander-in-Chief (CINC), United States Transportation Command (USTRANSCOM), with ensuring the establishment of safety requirements and criteria for evaluating civil air carriers and operators (hereinafter collectively referred to as ''air carriers'') providing air transportation and operational support services to the Department of Defense (DOD). It also charges the CINC with ensuring the establishment of a Commercial Airlift Review Board (CARB) and providing policy guidance and direction for its operation. This part establishes DOD quality and safety criteria for air carriers providing or seeking to provide air transportation and, at the discretion of the CARB or higher authority, operational support services to the DOD. This part also includes the operating procedures of the CARB. The CARB has the authority to suspend air carriers from DOD use or take other actions when issues of air carrier quality and air safety arise.

§ 861.3 Definitions.

(a) *Air carrier.* Individuals or entities that operate commercial fixed and rotary wing aircraft in accordance with the Federal Aviation Regulations (14 CFR Chapter I) or equivalent regulations issued by a country's Civil Aviation Authority (CAA) and which provide air transportation or operational support services. Commercial air carriers under contract with, or operating on behalf of the DOD shall have a FAA or CAA certificate.

(b) *Air transportation services.* The transport of DOD personnel or cargo by fixed or rotary wing commercial aircraft, where such services are acquired primarily for the transportation of DOD personnel and cargo, through donation or any form of contract, tender, blanket ordering agreement, Government charge card, Government or commercial transportation request (TR), bill of lading, or similar instruments. Air transportation services also include medical evacuation services, paratrooper drops, and charter airlift and group travel arranged by the Military Service Academies, foreign military sales, nonappropriated fund instrumentalities by other DOD and non-DOD activities for DOD personnel. All air carriers providing air transportation services to DOD must have a FAA or CAA certificate. The policy contained in this Directive shall not apply to individually procured, discretionary air travel, such as that associated with military leave or pass.

(c) *Civil Aviation Authority (CAA).* The CAA refers to the organization within a country that has the authority and responsibility to regulate civil aviation. The term CAA is used throughout this part since these requirements are applicable to both U.S. and foreign carriers doing business with DOD. The term CAA thus includes the U.S. Federal Aviation Administration (FAA).

(d) *Code sharing.* Code sharing is a marketing arrangement in which an air carrier places its designator code on a flight operated by another air carrier and sells tickets for that flight.

(e) *DOD approval.* DOD approval in the context of this part refers to the process by which air carriers seeking to provide passenger or cargo airlift services (hereinafter referred to as air transportation services) to the DOD must be screened and evaluated by the DOD Air Carrier Survey and Analysis Office or other entity authorized by the CARB, and approved for DOD use by the CARB. Once initial approval is obtained, a DOD approved air carrier must remain in an approved status to be eligible for DOD business. Although not generally required, the CARB or higher authority may, on a case-by-case basis, require DOD approval of air carriers providing operational support services to DOD.

(f) *DOD air carrier safety and quality review process.* Includes four possible levels of review with increasing authority. The responsibilities of each are described in more detail in the reference in § 861.1 (b). These levels consist of the:

(1) DOD Air Carrier Survey and Analysis Office;

(2) DOD Commercial Airlift Review Board (CARB);

(3) Commander-in-Chief, U.S. Transportation Command, or USCINCTRANS; and

(4) Secretary of Defense. (**Note:** A DOD-level body, the Commercial Airlift Review Authority, or CARA, provides advice and recommendations to the Secretary of Defense.)

(g) *Federal Aviation Administration (FAA) International Safety Assessment (IASA) program and categories.* The FAA IASA program assesses the ability of a foreign country's CAA to adhere to international standards established by the United Nation's technical agency for aviation, the International Civil Aviation Organization (ICAO). The FAA has established ratings for the status of countries as follows:

(1) *Category 1—Does comply with ICAO standards.* A country's CAA has been found to license and oversee air carriers in accordance with ICAO aviation safety standards.

(2) *Category 2—Does not comply with ICAO standards.* A country's CAA does not meet ICAO standards for aviation oversight. Operations to the U.S. by a carrier from a Category 2 country are limited to those in effect at the time a country is classified as Category 2 and are subjected to heightened FAA surveillance. Expansion or changes in services to the U.S. are not permitted while a country is in Category 2 status unless the carrier arranges to have new services conducted by an air carrier from a Category 1 country. Category 2 countries that do not have operations to the U.S. at the time of the FAA assessment are not permitted to commence such operations unless it arranges to have its flights conducted by an air carrier from a Category 1 country.

(3) *Non-rated.* A country's CAA is labeled ''non-rated'' if it has not been assessed by the FAA.

(h) *GSA City Pair Program.* A program managed by the General Services Administration in which U.S. air carriers compete for annual contracts awarding U.S. Government business for specific domestic and international scheduled service city pair routes.

(i) *Group travel.* Twenty-one or more passengers on orders from the same organization traveling on the same date to the same destination to attend the same function.

(j) *Letter of Warning.* A notice to a DOD approved air carrier of a failure to satisfy safety or airworthiness requirements which, if not remedied, may result in temporary nonuse or suspension of the air carrier by the DOD. Issuance of a *Letter of Warning* is not a prerequisite to a suspension or other action by the CARB or higher DOD authority.

(k) *On-site Capability Survey.* The most comprehensive evaluation performed by DOD's Air Carrier Survey and Analysis Office. Successful completion of this evaluation is required of most air carriers before they may be approved to provide air transportation services to DOD. Once approved, air carriers are subject to periodic On-site Capability Surveys, as

specified at Enclosure 3 in the reference in § 861.1(b).

(l) *Operational support services.* Missions performed by air carriers that use fixed or rotary-winged aircraft to provide services other than air transportation services as defined in paragraph (b) of this section. Examples include, but are not limited to, range instrumentation and services, target-towing, sling loads, and electronic countermeasures target flights. Air carriers providing only operational support services do not require advance DOD approval and are not subject to the initial or periodic on-site survey requirements under this part, unless directed by the CARB or higher authority. All air carriers providing operational support services to DOD must have a FAA or CAA certificate and are required to maintain applicable FAA or CAA standards absent deviation authority obtained pursuant to 14 CFR 119.55 or similar CAA rules.

(m) *Performance assessments.* Reviews conducted by U.S. air carriers when evaluating foreign air carriers with which they have code share arrangements, using performance-based factors. Such assessments include reviewing a variety of air carrier data including history, safety, scope/size, financial condition, equipment, flight operations and airworthiness issues.

(n) *Performance evaluations.* Reviews conducted by DOD as directed in the references in § 861.1(a) and (b). These evaluations include a review of air carrier flight operations, maintenance departments, safety programs and other air carrier areas as necessary. Performance evaluations are not conducted on-site, but rely on information collected primarily from the FAA and the National Transportation Safety Board (NTSB).

(o) *Preflight safety inspection.* A visual safety inspection of the interior and exterior of an air carrier's aircraft performed by DOD personnel in accordance with the references in § 861.1(a) and (b).

(p) *Suspension.* The exclusion of an air carrier from providing services to the DOD. The period of suspension will normally:

(1) Remain in effect until the air carrier furnishes satisfactory evidence that the conditions causing the suspension have been remedied and has been reinstated by the CARB, or;

(2) Be for a fixed period of time as determined at the discretion of the CARB.

(q) *Temporary nonuse.* The immediate exclusion of a DOD approved air carrier from providing services to the DOD pending a decision on suspension. Normally, temporary nonuse will be for a period of 30 days or less. However, by mutual agreement of the CARB and the air carrier involved, a suspension hearing or decision may be delayed and the air carrier continued in a temporary nonuse status for an extended period of time.

(r) *Voluntarily provided safety-related information.* Information which consists of nonfactual safety-related data, reports, statements, and other information provided to DOD by an air carrier at any point in the evaluation process described in this Part. It does not include factual safety-related information, such as statistics, maintenance reports, training records, flight planning information, and the like.

§ 861.4 DOD air transportation quality and safety requirements.

(a) *General.* The DOD, as a customer of air transportation and operational support services, expects air carriers used by DOD to employ programs and business practices that not only ensure good service but also enhance the safety, operational, and maintenance standards established by applicable Civil Aviation Authority (CAA) regulations. Accordingly, and as required by the references in § 861.1 (a) and (b), the DOD has established a set of quality and safety criteria and requirements that reflect the type programs and practices DOD seeks from air carriers providing services to DOD. Air carriers must meet and maintain these requirements in order to be eligible for DOD business. Air carriers providing air transportation services to DOD either directly by contract or agreement, or indirectly through the General Services Administration (GSA) City Pair Program or some other arrangement, must be approved by DOD prior to providing such services and remain in an approved status throughout the contract, agreement, or arrangement performance period. This approval entails successful completion of initial and recurring on-site surveys as well as periodic performance evaluations in accordance with the reference in § 861.1(b). The quality and safety criteria and requirements set forth in this part complement rather than replace the CAA criteria applicable to air carriers. Air carriers normally remain fully subject to applicable CAA regulations (CARs) while performing business for the DOD, even when the aircraft involved is used exclusively for DOD missions. The inspection and oversight criteria set forth in this part do not, as a general rule, apply to air carriers providing only operational support services to DOD. However, in the event concerns relating to the safety of such a carrier arise, the CARB or higher authority may, on a case-by-case basis, direct an appropriate level of oversight under the authority of this part.

(b) *Applicability.* (1) The evaluation, quality and safety criteria and requirements set forth in this part apply to air carriers providing or seeking to provide air transportation services to DOD.

(2) Foreign air carriers performing portions of GSA City Pair routes awarded to U.S. air carriers under a code-sharing arrangement, as well as foreign air carriers providing individually-ticketed passenger service to DOD personnel traveling on official business, may be subject to limited oversight and review pursuant to § 861.6.

(3) The inspection and oversight requirements, as well as the quality and safety criteria of this part may, on a case-by-case basis and at the discretion of the CARB or higher authority, be applied to air carriers seeking to provide or providing operational support services as defined in § 861.3(l).

(4) The inspection and oversight requirements of this part do not apply to aircraft engaged in medical transport services if procured under emergency conditions to save life, limb or eyesight. Likewise, the inspection and oversight requirements of this part are not applicable when DOD is not involved in the procurement of the medical transportation services. For example, when specific medical treatment is obtained on an individual basis by or for DOD personnel with medical transportation provided, as needed, at the direction of the non-DOD medical care giver. This includes situations where DOD, through TRICARE or otherwise, pays for such transportation as part of the costs of medical services provided.

(c) *Scope and nature of the evaluation program*—(1) *Evaluation requirement.* The provision of air transportation services under a contract or agreement with or on behalf of DOD, requires the successful completion of an initial on-site survey and approval by the CARB under this part in order to be eligible for DOD business. In addition, U.S. air carriers awarded contracts under the GSA City Pair Program, including those that perform part of the contract under a code-sharing arrangement with the U.S. air carrier awarded the contract, must successfully complete an initial on-site survey and be approved by the CARB for DOD use under this part prior to beginning performance of the GSA contract. Once approved by DOD, air

carriers providing air transportation services are subject to recurring on-site surveys and performance evaluations and assessments throughout the duration of the relevant contract or agreement. The frequency and scope of these surveys and performance reviews will be in accordance with Enclosure 3 of the reference in § 861.1(b).

(2) *Office of primary responsibility.* Evaluations are performed by the DOD Air Carrier Survey and Analysis Office located at Scott Air Force Base, Illinois. The mailing address of this office is HQ AMC/DOB, 402 Scott Drive Unit 3A1, Scott AFB IL 62225–5302. The website address is *https://public.scott.af.mil/hqamc/dob/index.htm.*

(3) *Items considered in the evaluation process.* The specifics of the applicable DOD contract or agreement (if any), the applicable CAA regulations, and the experienced judgment of DOD personnel will be used to evaluate an air carrier's capability to perform services for DOD. The survey may also include, with the air carrier's coordination, observation of cockpit crew performance, as well as ramp inspections of selected company aircraft. In the case of air carriers seeking to provide air transportation services, after satisfactory completion of the initial survey and approval by the CARB as a DOD air carrier, follow-up surveys will be conducted on a recurring basis and when otherwise required to validate adherence to DOD quality and safety requirements. DOD personnel will also assess these quality and safety requirements when conducting periodic air carrier performance evaluations. The size of an air carrier, along with the type and scope of operations will be considered during the on-site survey. For example, while an air taxi operator may not have a formal flight control function, such as a 24-hour dispatch organization, that same air taxi operator is expected to demonstrate some type of effective flight following capability. On the other hand, a major air carrier is expected to have a formal flight control or dispatch function. Both, however, will be evaluated based on the effectiveness and quality of whatever flight following function they do maintain. In the case of air carriers seeking to provide operational support services, the type, scope and frequency of evaluation, if any, performed by DOD or other entity will be as directed by the CARB or higher authority.

(d) *Status of aircraft performing services for DOD.* All air carriers providing air transportation or operational support services to the DOD shall have FAA or CAA air carrier or commercial operator certificates and shall remain under FAA and/or CAA regulatory and safety oversight during performance of the DOD mission. Aircraft performing services for or on behalf of DOD shall be on the air carrier's operating certificate, and remain on that certificate while performing the DOD mission. The installation of any special equipment needed to perform services for DOD shall be FAA or CAA approved or an appropriate FAA or CAA waiver obtained.

(e) *Evaluation requirements.* The air carrier requirements stated in this part provide the criteria against which would-be DOD and GSA City Pair Program air carrier contractors, as well as air carriers providing services on behalf of DOD, may be subjectively evaluated by DOD. These requirements are neither all-inclusive nor inflexible in nature. They are not replacements for the certification criteria and other regulations established by the CAA. Rather, these requirements complement CAA certification criteria and regulations and describe the enhanced level of service required by DOD. The relative weight accorded these requirements in a given case, as well as the determination of whether an air carrier meets or exceeds them, is a matter within the sole discretion of the DOD Air Carrier Survey and Analysis Office and the CARB, subject to the statutory minimums provided in the reference in § 861.1(a).

(1) *Quality and safety requirements—prior experience.* U.S. and foreign air carriers applying for DOD approval in order to conduct air transportation services for or on behalf of DOD under a contract or agreement with DOD, the GSA City Pair Program, or by some other arrangement are required to possess 12 months of continuous service equivalent to the service sought by DOD. In applying this requirement, the following guidance will be used by DOD authorities:

(i) ''12 months'' refers to the 12 calendar months immediately preceding the request for DOD approval.

(ii) ''Continuous'' service means the carrier must have performed revenue-generating services of the nature for which DOD approval is sought, as an FAA Part 121, 125, 127, or 135 (14 CFR 121, 125, 127, or 135) air carrier (or foreign CAA equivalent if appropriate) on a recurring, substantially uninterrupted basis. The services must have occurred with such frequency and regularity as to clearly demonstrate the carrier's ability to perform and support sustained, safe, reliable, and regular services of the type DOD is seeking. Weekly flight activity is normally considered continuous, while sporadic or seasonal operations (if such operations are the only operations conducted by the carrier) may not suffice to establish a carrier's ability to perform and support services in the sustained, safe, reliable, and regular manner required by DOD. The ability of a carrier to perform services of the type sought by DOD may be called into question if there have been lengthy periods of time during the qualifying period in which the carrier has not operated such services. Consequently, any cessation, or nonperformance of the type of service for which approval is sought may, if it exceeds 30 days in length during the qualifying period and depending on the underlying factual circumstances, necessitate ''restarting'' the 12-month continuous service period needed to obtain DOD approval.

(iii) ''Equivalent to the services sought by DOD'' means service offered to qualify for DOD approval must be substantially equivalent to the type of service sought by DOD. The prior experience must be equivalent in difficulty and complexity with regard to the distances flown, weather systems encountered, international and national procedures, the same or similar aircraft, schedule demands, aircrew experience, number of passengers handled, frequency of operations, and management required. There is not a set formula for determining whether a particular type of service qualifies. The performance of cargo services is not considered to be ''substantially equivalent'' to the performance of passenger services, and may not be used to meet the 12 continuous months requirement for passenger services. However, when a carrier already providing cargo services to DOD applies to carry passengers, the CARB may consider the carrier's cargo performance and experience in assessing whether a carrier is qualified to carry passengers on a specific type or category of aircraft, over certain routes or stage lengths, or under differing air traffic control, weather, or other conditions. The following examples are illustrative and not intended to reflect or predict CARB action in any given case:

Example 1: Coyote Air has operated commercial passenger commuter operations in the U.S. for a number of years flying a variety of twin-engine turboprop aircraft. They have also been a DOD-approved cargo carrier, providing international cargo services using DC–10 freighter aircraft. Coyote Air purchases a passenger version DC–10, and seeks DOD approval to provide international passenger service for DOD. The CARB may decide that although Coyote Air has provided

passenger services for 12 continuous months, those services are not substantially equivalent to those being sought by DOD. While the carrier may have considerable operational experience with the DC–10, its commuter passenger operations are not substantially equivalent to the service now proposed—international passenger services on large jet aircraft.

Example 2: Acme Air has been a DOD-approved cargo carrier for several years, operating domestic and international missions with MD–11 freighter aircraft. At the same time, Acme has been performing commercial international passenger services with B–757 aircraft. Acme Air purchases a MD–11 passenger aircraft and applies to perform passenger services for DOD using the MD–11. Assuming Acme has performed B–757 passenger service for 12 continuous months immediately preceding its application, the CARB may consider these passenger services substantially equivalent to those proposed since both involve the operation of large multi-engine aircraft in an international environment. The CARB may also consider Acme's operational history with its MD–11 freighter aircraft in determining whether the carrier is competent to provide MD–11 passenger service in the same environment.

(iv) Once approved by DOD, an air carrier's failure to maintain continuous operations of the type for which approval has been granted may, at the discretion of the CARB, be grounds for nonuse or suspension under this part, rendering the carrier ineligible for DOD business during the nonuse or suspension period. Any cessation or nonperformance of the type of service for which approval has been obtained may, if it exceeds 30 days in length and depending on the circumstances, provide the basis for the CARB to take appropriate action.

(2) *Quality and safety requirements—air carrier management.* Management has clearly defined safety as the number one company priority, and safety is never sacrificed to satisfy passenger concern, convenience, or cost. Policies, procedures, and goals that enhance the CAA's minimum operations and maintenance standards have been established and implemented. A cooperative response to CAA inspections, critiques, or comments is demonstrated. Proper support infrastructure, including facilities, equipment, parts, and qualified personnel, is provided at the certificate holder's primary facility and en route stations. Personnel with aviation credentials and experience fill key management positions. An internal quality audit program or other method capable of identifying in-house deficiencies and measuring the company's compliance with their stated policies and standards has been implemented. Audit results are analyzed in order to determine the cause, not just the symptom, of any deficiency. The result of sound fiscal policy is evident throughout the company. Foreign code-sharing air carrier partners are audited at least every two years using DOD-approved criteria and any findings resolved. Comprehensive disaster response plans and, where applicable, family support plans, must be in place and exercised on a regular basis.

(3) *Quality and safety requirements—operations*—(i) *Flight safety.* Established policies that promote flight safety. These policies are infused among all aircrew and operational personnel who translate the policies into practice. New or revised safety-related data are promptly disseminated to affected personnel who understand that deviation from any established safety policy is unacceptable. An audit system that detects unsafe practices is in place and a feedback structure informs management of safety policy results including possible safety problems. Management ensures that corrective actions resolve every unsafe condition.

(ii) *Flight operations.* Established flight operations policies and procedures are up-to-date, reflect the current scope of operations, and are clearly defined to aviation department employees. These adhered-to procedures are further supported by a flow of current, management-generated safety and operational communications. Managers are in touch with mission requirements, supervise crew selection, and ensure the risk associated with all flight operations is reduced to the lowest acceptable level. Flight crews are free from undue management pressure and are comfortable with exercising their professional judgment during flight activities, even if such actions do not support the flight schedule. Effective lines of communication permit feedback from line crews to operations managers. Personnel records are maintained and reflect such data as experience, qualifications, and medical status.

(iii) *Flight crew hiring.* Established procedures ensure that applicants are carefully screened, including a review of the individual's health and suitability to perform flight crew duties. Consideration is given to the applicant's total aviation background, appropriate experience, and the individual's potential to perform safely. Freedom from alcohol abuse and illegal drugs is required. If new-hire cockpit crewmembers do not meet industry standards for experience and qualification, then increased training and management attention to properly qualify these personnel are required.

(iv) *Aircrew training.* Training, including recurrent training, which develops and refines skills designed to eliminate mishaps and improve safety, is essential to a quality operation. Crew coordination training that facilitates full cockpit crews training and full crew interaction using standardized procedures and including the principles of Crew Resource Management (CRM) is required. Programs involving the use of simulators or other devices that can provide realistic training scenarios are desired. Captain and First Officer training objectives cultivate similar levels of proficiency. Appropriate emergency procedures training (*e.g.*, evacuation procedures) is provided to flight deck and flight attendant personnel as a total crew whenever possible; such training focuses on cockpit and cabin crews functioning as a coordinated team during emergencies. Crew training—be it pilot, engineer, or flight attendant—is appropriate to the level of risk and circumstances anticipated for the trainee. Training programs have the flexibility to incorporate and resolve recurring problem areas associated with day-to-day flight operations. Aeromedical crews must also be trained in handling the specific needs of the categories of patients normally accepted for transportation on the equipment to be used. Trainers are highly skilled in both subject matter and training techniques. Training received is documented, and that documentation is maintained in a current status.

(v) *Captain upgrade training.* A selection and training process that considers proven experience, decision making, crew resource management, and response to unusual situations, including stress and pressure, is required. Also important is emphasis on captain responsibility and authority.

(vi) *Aircrew scheduling.* A closely monitored system that evaluates operational risks, experience levels of crewmembers, and ensures the proper pairing of aircrews on all flights is required. New captains are scheduled with highly experienced first officers, and new or low-time first officers are scheduled with experienced captains. Except for aircraft new to the company, captains and first officers assigned to DOD charter passenger missions possess at least 250 hours combined experience in the type aircraft being operated. The scheduling system involves an established flight duty time program for aircrews, including flight attendants, carefully managed so as to ensure proper crew rest and considers quality-

of-life factors. Attention is given to the stress on aircrews during strikes, mergers, or periods of labor-management difficulties.

(vii) *In-flight performance.* Aircrews, including flight attendants and flight medical personnel, are fit for flight duties and trained to handle normal, abnormal, and emergency situations. They demonstrate crew discipline and a knowledge of aviation rules; use company-developed standardized procedures; adhere to checklists; and emphasize safety, including security considerations, throughout all preflight, in-flight, and postflight operations. Qualified company personnel evaluate aircrews and analyze results; known performance deficiencies are eliminated. Evaluations ensure aircrews demonstrate aircraft proficiency in accordance with company established standards. Flight crews are able to determine an aircraft's maintenance condition prior to flight and use standardized methods to accurately report aircraft deficiencies to the maintenance activity.

(viii) *Operational control/support.* Effective mission control includes communications with aircrews and the capability to respond to irregularities or difficulties. Clear written procedures for mission preparation and flight following aircraft and aircrews are provided. There is access to weather, flight planning, and aircraft maintenance data. There are personnel available who are knowledgeable in aircraft performance and mission requirements and that can correctly respond to emergency situations. There is close interface between operations and maintenance, ensuring a mutual awareness of aircraft operational and maintenance status. Procedures to notify DOD in case of an accident or serious incident have been established. Flight crews involved in such accidents or incidents report the situation to company personnel who, in turn, have procedures to evaluate the flight crew's capability to continue the mission. Aircraft involved in accidents or incidents are inspected in accordance with Civil Aviation Regulations and a determination made as to whether or not the aircraft is safe for continued operations.

(ix) *DOD charter procedures.* Detailed procedures addressing military charter requirements are expected. The level of risk associated with DOD charter missions does not exceed the risks inherent in the carrier's non-DOD daily flight operations. Complete route planning and airport analyses are accomplished, and actual passenger and cargo weights are used in computing aircraft weight and balance.

(4) *Quality and safety requirements—maintenance.* Maintenance supervisors ensure all personnel understand that in spite of scheduling pressure, peer pressure, supervisory pressure, or other factors, the airplane must be airworthy prior to flight. Passenger and employee safety is a paramount management concern. Quality, completeness, and integrity of work are trademarks of the maintenance manager and maintenance department. Nonconformance to established maintenance practices is not tolerated. Management ensures that contracted maintenance, including repair and overhaul facilities, is performed by maintenance organizations acceptable to the CAA.

(i) *Maintenance personnel.* Air carriers are expected to hire and train the number of employees required to safely maintain the company aircraft and support the scope of the maintenance operations both at home station (the company's primary facility) and at en route locations. These personnel ensure that all maintenance tasks, including required inspections and airworthiness directives, are performed; that maintenance actions are properly documented; and that the discrepancies identified between inspections are corrected. Mechanics are fit for duty, properly certificated, the company verifies certification, and these personnel possess the knowledge and the necessary aircraft-specific experience to accomplish the maintenance tasks. Noncertified and inexperienced personnel received proper supervision. Freedom from alcohol abuse and illegal drugs is required.

(ii) *Quality assurance.* A system that continuously analyzes the performance and effectiveness of maintenance activities and maintenance inspection programs is required. This system evaluates such functions as reliability reports, audits, component tear-down reports, inspection procedures and results, tool calibration program, real-time aircraft maintenance actions, warranty programs, and other maintenance functions. The extent of this program is directly related to the air carrier's size and scope of operation. The cause of any recurring discrepancy or negative trend is researched and eliminated. Action is taken to prevent recurrence of these discrepancies and preventive actions are monitored to ensure effectiveness. The results of preventive actions are provided to appropriate maintenance technicians.

(iii) *Maintenance inspection activity.* A process to ensure required aircraft inspections are completed and the results properly documented is required. Also required is a system to evaluate contract vendors, suppliers, and their products. Inspection personnel are identified, trained (initial and recurrent), and provided guidance regarding inspector responsibility and authority. The inspection activity is normally a separate entity within the maintenance department.

(iv) *Maintenance training.* Training is conducted commensurate with the size and type of maintenance function being performed. Continuing education and progressive experience are provided for all maintenance personnel. Orientation, familiarization, on-the-job, and appropriate recurrent training for all full and part-time personnel are expected. The use of such training aids as mockups, simulators, and computer-based training enhances maintenance training efforts and is desired. Training documentation is required; it is current, complete, well maintained, and correctly identifies any special authorization such as inspection and airworthiness release. Trainers are fully qualified in the subject manner.

(v) *Maintenance control.* A method to control maintenance activities and track aircraft status is required. Qualified personnel monitor maintenance preplanning, ensure completion of maintenance actions, and track deferred discrepancies. Deferred maintenance actions are identified to supervisory personnel and corrected in accordance with the criteria provided by the manufacturer or regulatory agency. Constant and effective communications between maintenance and flight operations ensure an exchange of critical information.

(vi) *Aircraft maintenance program.* Aircraft are properly certified and maintained in a manner that ensures they are airworthy and safe. The program includes the use of manufacturer's and CAA information, as well as company policies and procedures. Airworthiness directives are complied with in the prescribed time frame, and service bulletins are evaluated for applicable action. Approved reliability programs are proactive, providing management with visibly on the effectiveness of the maintenance program; attention is given to initial component and older aircraft inspection intervals and to deferred maintenance actions. Special tools and equipment are calibrated.

(vii) *Maintenance records.* Maintenance actions are well documented and provide a complete record of maintenance accomplished and, for repetitive actions, maintenance required. Such records as aircraft log books and maintenance documentation

are legible, dated, clean, readily identifiable, and maintained in an orderly fashion. Inspection compliance, airworthiness release, and maintenance release records, *etc.,* are completed and signed by approved personnel.

(viii) *Aircraft appearance.* Aircraft exteriors, including all visible surfaces and components, are clean and well maintained. Interiors are also clean and orderly. Required safety equipment and systems are available and operable.

(ix) *Fueling and servicing.* Aircraft fuel is free from contamination, and company fuel facilities (farms) are inspected and results documented. Procedures and instructions pertaining to servicing, handling, and storing fuel and oil meet established safety standards. Procedures for monitoring and verifying vendor servicing practices are included in this program.

(x) *Maintenance manuals.* Company policy manuals and manufacturer's maintenance manuals are current, available, clear, complete, and adhered to by maintenance personnel. These manuals provide maintenance personnel with standardized procedures for maintaining company aircraft. Management policies, lines of authority, and company maintenance procedures are documented in company manuals and kept in a current status.

(xi) *Maintenance facilities.* Well maintained, clean maintenance facilities, adequate for the level of aircraft repair authorized in the company's CAA certificate are expected. Safety equipment is available in hangars, shops, *etc.,* and is serviceable. Shipping, receiving, and stores areas are likewise clean and orderly. Parts are correctly packaged, tagged, segregated, and shelf life properly monitored.

(5) *Quality and safety requirements—security.* Company personnel receive training in security responsibilities and practice applicable procedures during ground and in-flight operations. Compliance with provisions of the appropriate standard security program, established by the Transportation Security Administration or foreign equivalent, is required for all DOD missions.

(6) *Quality and safety requirements—specific equipment requirements.* Air carriers satisfy DOD equipment and other requirements as specified in DOD agreements.

(7) *Quality and safety requirements—oversight of commuter or foreign air carriers in code-sharing agreements.* Air carriers awarded a route under the Passenger Standing Route Order (PSRO) program, the GSA City Pair Program, or other DOD program, that includes performance of a portion of the route by a commuter or foreign air carrier with which it has a code-sharing arrangement, must have a formal procedure in place to periodically review and assess the code-sharing air carrier's safety, operations, and maintenance programs. The extent of such reviews and assessments must be consistent with, and related to, the code-sharing air carrier's safety history. These procedures must also provide for actual inspections of the foreign code-sharing air carrier if the above reviews and assessments indicate questionable safety practices.

(8) *Quality and safety requirements—aeromedical transport requirements.* (i) The degree of oversight is as determined by the CARB or higher authority. When an inspection is conducted, DOD medical personnel may also participate to assess the ability to provide the patient care and any specialty care required by DOD. The CARB's review will be limited solely to issues related to flight safety.

(ii) Portable Electronic Devices (PEDs) used in the provision of medical services or treatment on board aircraft are tested for non-interference with aircraft systems and the results documented to show compliance with 14 CFR 91.21 or other applicable CAA regulations. If there are no CAA regulations, actual use/inflight testing of the same or similar model PED prior to use with DOD patients is the minimum requirement.

§ 861.5 DOD Commercial Airlift Review Board procedures

(a) This section establishes procedures to be used by the DOD when, in accordance with references in § 861.1(a) and (b):

(1) An air carrier is subject to review or other action by the DOD Commercial Airlift Review Board, or CARB;

(2) A warning, suspension, temporary nonuse, or reinstatement action is considered or taken against a carrier by the CARB; or

(3) An issue involving an air carrier is referred by the CARB to higher authority for appropriate action.

(b) These procedures apply to air carriers seeking to provide or already providing air transportation services to DOD. It also applies to U.S. or foreign air carriers providing operational support services to DOD which, on a case-by-case basis and at the discretion of the CARB or higher authority, require some level of oversight by DOD.

(c) An air carrier's sole remedy in the case of a suspension decision by the CARB is the appellate process under this part.

(d) Quality and safety issues relating to air carriers used, or proposing to be used, by DOD, per reference (b) must be referred to the CARB for appropriate disposition.

(e) *CARB responsibilities.* As detailed in the reference in § 861.1(b), the CARB provides a multifunctional review of the efforts of the DOD Air Carrier Survey and Analysis Office and is the first level decision authority in DOD on quality and safety issues relating to air carriers. Responsibilities include, but are not limited to: the review and approval or disapproval of air carriers seeking initial approval to provide air transportation service to DOD; the review and approval or disapproval of air carriers in the program that do not meet DOD quality and safety requirements; the review and approval or disapproval of air carriers in the program seeking to provide a class of service different from that which they are currently approved; taking action to suspend, reinstate, or place into temporary nonuse or extended temporary nonuse, DOD approved carriers; taking action, on an as needed basis, to review, suspend, reinstate, or place into temporary nonuse or extended temporary nonuse, an air carrier providing operational support services to DOD; and, referring with recommendations, issues requiring resolution or other action by higher authority.

(f) *CARB administrative procedures.*—(1) *Membership.* The CARB will consist of four voting members appointed by USCINCTRANS from USTRANSCOM and its component commands. These members and their alternates will be general officers or their civilian equivalent, with experience in the operations, maintenance, transportation, or air safety fields. A Chairman and alternate will be designated. Nonvoting CARB members will be appointed as necessary by USCINCTRANS. A non-voting recorder will also be appointed.

(2) *Decisions.* Decisions of the CARB will be taken by a majority vote of the voting members present, with a minimum of three voting members (or their alternates) required to constitute a quorum. In the event of a tie, the Chair of the CARB will decide the issue.

(3) *Meetings of the CARB.* The CARB may meet either in person or by some electronic means. It will be convened by either USCINCTRANS or the Chair of the CARB. The meeting date, time, and site of the CARB will be determined at the time of the decision to convene the CARB. Minutes of CARB meetings will be taken by the recorder, summarized, and preserved with all other records relating to the CARB meeting. The recorder will ensure the air carrier and

appropriate DOD and federal agencies are notified of the CARB's decision(s) and reasons therefore. In the event of a fatal accident, the CARB shall convene as soon as possible but not later than 72 hours after notification by the Chair.

(g) *CARB operating procedures.*—(1) *Placing an air carrier into temporary nonuse.* (i) In case of a fatal aircraft accident or for other good cause, two or more voting members of the CARB may jointly make an immediate determination whether to place the air carrier involved into a temporary nonuse status pending suspension proceedings. Prior notice to the air carrier is not required.

(ii) The carrier shall be promptly notified of the temporary nonuse determination and the basis therefore.

(iii) Temporary nonuse status terminates automatically if suspension proceedings are not commenced, as set out in paragraph (g)(2) of this section, within 30 days of inception unless the CARB and air carrier mutually agree to extend the temporary nonuse status.

(2) *Suspension of an air carrier.* (i) On a recommendation of the DOD Air Carrier Survey and Analysis Office or any individual voting member of the CARB, the CARB shall consider whether or not to suspend a DOD approved air carrier.

(ii) If the CARB determines that suspension may be appropriate, it shall notify the air carrier that suspension action is under consideration and of the basis for such consideration. The air carrier will be offered a hearing within 15 days of the date of the notice, or other such period as granted by the CARB, at which the air carrier may be present and may offer evidence. The hearings shall be as informal as practicable, consistent with administrative due process. Formal rules of evidence do not apply.

(iii) The types of evidence which may be considered includes, but is not limited to:

(A) Information and analysis provided by the DOD Air Carrier Survey and Analysis Office.

(B) Information submitted by the air carrier.

(C) Information relating to action that may have been taken by the air carrier to:

(*1*) Correct the specific deficiencies that led the CARB to consider suspension; and

(*2*) Preclude recurring similar deficiencies.

(D) Other matters the CARB deems relevant.

(iv) The CARB's decisions on the reception or exclusion of evidence shall be final.

(v) Air carriers shall have the burden of proving their suitability to safely perform DOD air transportation and/or operational support services by clear and convincing evidence.

(vi) After the conclusion of such hearing, or if no hearing is requested and attended by the air carrier within the time specified by the CARB, the CARB shall consider the matter and make a final decision whether or not to suspend the air carrier or to impose such lesser sanctions as appropriate. The air carrier will be notified of the CARB's decision.

(3) *Reinstatement.* (i) The CARB may consider reinstating a suspended carrier on either CARB motion or carrier motion, unless such carrier has become ineligible in the interim.

(ii) The carrier has the burden of proving by clear and convincing evidence that reinstatement is warranted. The air carrier must satisfy the CARB that the deficiencies, which led to suspension, have been corrected and that action has been implemented to preclude the recurrence of similar deficiencies.

(iii) Air carrier evidence in support of reinstatement will be provided in a timely manner to the CARB for its review. The CARB may independently corroborate the carrier-provided evidence and may, at its option, convene a hearing and request the participation of the air carrier.

(4) *Appeal of CARB decisions.* (i) An air carrier placed in suspension by the CARB may administratively appeal this action to USCINCTRANS. An appeal, if any, must be filed in writing, with the DOD Air Carrier Survey and Analysis Office, and postmarked within 15 workdays of receipt of notice of the CARB's suspension decision. In the sole discretion of USCINCTRANS, and for good cause shown, the suspension may be stayed pending action on the appeal.

(ii) Air carriers shall not be entitled to a de novo hearing or personal presentation before the appellate authority.

(iii) The decision of the appellate authority is final and is not subject to further administrative review or appeal.

(5) *Referral of issues to higher authorities.* The approval or disapproval of an air carrier for use by DOD, the placing of approved carriers into temporary nonuse status, and the suspension and reinstatement of approved carriers, are all decisions which must be made by the CARB. Other matters may be referred by the CARB to USCINCTRANS for appropriate action, with or without recommendations by the CARB. The CARB will forward for decision, through USCINCTRANS to the Under Secretary of Defense (Acquisition, Technology and Logistics) (USD(AT&L)), all air carrier use/nonuse recommendations involving foreign air carriers other than those providing charter transportation or operational support service to the Department of Defense.

§ 861.6 DOD review of foreign air carriers.

Foreign air carriers providing or seeking to provide services to DOD shall be subject to review and, if appropriate, approval by DOD. Application of the criteria and requirements of this part and the degree of oversight to be exercised by DOD, if any, over a foreign air carrier depends upon the type of services performed and, in some instances, by the quality of oversight exercised by the foreign air carrier's CAA. The scope and frequency of the review of any given foreign air carrier under this part will be at the discretion of the CARB or higher authority.

(a) *Foreign air carriers seeking to provide or providing air transportation services under a contract or Military Air Transportation Agreement with DOD, or pursuant to another arrangement entered into by, or on behalf of, DOD.* Foreign air carriers seeking to provide or providing air transportation services under a contract or Military Air Transportation Agreement with DOD, must meet all requirements of § 861.4, and be approved by the CARB in accordance with § 861.5. This includes foreign air carriers seeking to provide, or providing, airlift services to DOD personnel pursuant to an arrangement entered into by another federal agency, state agency, foreign government, international organization, or other entity or person on behalf of, or for the benefit of, DOD, regardless of whether DOD pays for the airlift services provided. For purposes of establishing the degree of oversight and review to be conducted under the DOD Commercial Air Transportation Quality and Safety Review Program, such foreign air carriers are considered the same as U.S. carriers. In addition, they must have an operating certificate issued by the appropriate CAA using regulations which are the substantial equivalent of those found in the U.S. FARs, and must maintain such certification throughout the term of the contract or agreement. The CAA responsible for exercising oversight of the foreign air carrier must meet ICAO standards as determined by ICAO, or the FAA under the FAA's International Aviation Safety Assessment Program.

(b) *Foreign air carriers providing passenger services under the GSA City Pair Program.* Foreign air carriers

performing any portion of a route awarded to a U.S. air carrier under the GSA City Pair Program pursuant to a code-sharing agreement with that U.S. air carrier, are generally not subject to DOD survey and approval under §§ 861.4 and 861.5. However, DOD will periodically review the performance of such foreign carriers. This review may consist of recurring performance evaluations, periodic examination of the U.S. code-sharing carrier's operational reviews and assessments of the foreign carrier and, where appropriate and agreed to by the air carriers concerned and DOD, on-site surveys of the foreign air carrier. Such carriers must also meet the 12 months prior experience requirement of § 861.4(e)(1). The CARB or higher authority may prescribe additional review requirements. Should circumstances warrant, use of these air carriers by DOD passengers on official business may be restricted or prohibited as necessary to assure the highest levels of passenger safety.

(c) *Other foreign air carriers carrying individually ticketed DOD passengers on official business.* Foreign air carriers carrying individually ticketed DOD passengers on official business are not subject to DOD survey and approval under §§ 861.4 and 861.5. However, the DOD Air Carrier Survey and Analysis Division may periodically review the performance of such carriers. Reviews may include voluntary on-site surveys as directed by the CARB or higher authority. In the event questions relating to the safety and continued use of the carrier arise, the matter may be referred to the CARB for appropriate action.

(d) *Foreign air carriers from countries in which the CAA is not in compliance with ICAO standards.* Unless otherwise authorized, use by DOD personnel on official business of foreign air carriers from countries in which the CAA is not in compliance with ICAO standards is prohibited except for the last leg into and the first leg out of the U.S. on such carriers. This includes foreign air carriers performing any portion of a route awarded to a U.S. air carrier under the GSA City Pair Program pursuant to a code-sharing agreement with that U.S. air carrier.

(e) *On-site surveys.* The scope of the on-site survey of a foreign air carrier will be at the discretion of the CARB. In the event a foreign air carrier denies a request made under this part to conduct an on-site survey, the CARB will consider all available information and make a use/nonuse recommendation to DOD. If placed in nonuse status by DOD, such air carriers will not be used unless, in accordance with the reference in § 861.1 (b), in the judgment of the appropriate Combatant Commander, no acceptable alternative to using the carrier exists and the travel is mission essential.

(f) *Foreign carriers providing operational support services to DOD.* Such carriers are subject to DOD oversight, on a case-by-case basis, to the extent directed by the CARB or higher authority.

§ 861.7 Disclosure of voluntarily provided safety-related information.

(a) *General.* In accordance with paragraph (h) of the reference in § 861.1 (a), DOD may withhold from public disclosure safety-related information voluntarily provided to DOD by an air carrier for the purposes of this Part if DOD determines that—

(1) The disclosure of the information would, in the future, inhibit an air carrier from voluntarily providing such information to DOD or another Federal agency for the purposes of this Part or for other air safety purposes; and

(2) The receipt of such information generally enhances the fulfillment of responsibilities under this Part or other air safety responsibilities involving DOD or another Federal agency.

(b) *Processing requests for disclosure of voluntarily provided safety-related information.* Requests for public disclosure will be administratively processed in accordance with 32 CFR Part 806, Air Force Freedom of Information Act Program.

(c) *Disclosure of voluntarily provided safety-related information to other agencies.* The Department of Defense may, at its discretion, disclose voluntarily provided safety-related information submitted under this Part by an air carrier, to other agencies with safety responsibilities. The DOD will provide such information to another agency only upon receipt of adequate assurances that it will protect the information from public disclosure, and that it will not release such information unless specifically authorized.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–27087 Filed 10–25–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–123]

Drawbridge Operation Regulations: Taunton River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Brightman Street Bridge, mile 1.8, across the Taunton River between Fall River and Somerset, Massachusetts. This deviation from the regulations allows the bridge to open only one lift span for the passage of vessel traffic from 9 p.m. on November 8, 2002 through 4 p.m. on November 22, 2002. During this deviation the Fall River lift span will remain in the closed position for vessel traffic and the Somerset lift span will be fully operational at all times. This deviation is necessary to facilitate scheduled maintenance at the bridge.

DATES: This deviation is effective from November 8, 2002 through November 22, 2002.

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

SUPPLEMENTARY INFORMATION: The bridge owner, Massachusetts Highway Department, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary structural repairs at the bridge, replacement of the main floor beam, at the bridge.

Under this deviation the Brightman Street Bridge, mile 1.8, across the Taunton River in Massachusetts, will be allowed to open only a single lift span for the passage of vessel traffic from 9 p.m. on November 8, 2002 through 4 p.m. on November 22, 2002. During this deviation the Fall River lift span will remain in the closed position for vessel traffic and the Somerset lift span will be fully operational at all times.

There have been few requests to open this bridge during the requested time period scheduled for these structural repairs in past years. The Coast Guard and the bridge owner coordinated this closure with the facilities upstream from the bridge and no objections to this scheduled closure were received.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: October 18, 2002.

V.S. Crea,

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

[FR Doc. 02–27373 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–125]

Drawbridge Operation Regulations; Memorial Drawbridge, Atlantic Intracoastal Waterway, Daytona Beach, Volusia County, 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 Memorial Drawbridge, across the Atlantic Intracoastal Waterway, mile 830.6, Daytona Beach, Florida. This deviation allows the bridge to only open a single leaf from 6 a.m. until 6 p.m. from November 2, 2002 until December 31, 2002. A double leaf opening will be available with 30-minutes advance notice to the bridge tender. From 6:01 p.m. until 5:59 a.m. the bridge will remain in the open to navigation position. This temporary deviation is required to allow the bridge owner to safely complete emergency repairs to the bridge.

DATES: This deviation is effective from 6 a.m. on November 2, 2002 until 6 p.m. on December 31, 2002.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07–02–125] 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, Room 432, 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 at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The existing regulations for the Memorial Drawbridge in 33 CFR 117.261(g), require the drawbridge to open on signal; except that from 7:45 a.m. to 8:45 a.m. and from 4:45 p.m. to 5:45 p.m., Monday through Saturday except Federal holidays, the draw need open only at 8:15 a.m. and 5:15 p.m.

Volusia county officials notified the Coast Guard on October 1, 2002, that they needed to operate the bridge on a single leaf schedule to effect emergency repairs. The drawbridge will be closed to vehicular traffic during the entire period of repair. The Commander, Seventh Coast Guard District has granted a temporary deviation from the operating requirements listed in 33 CFR 117.261(g) to complete emergency repairs to the drawbridge. This deviation, the Memorial Drawbridge, mile 830.6 at Daytona, need only open a single leaf, from 6 a.m. until 6 p.m. on November 2, 2002 to December 31, 2002. A double-leaf opening is available with a 30-minute advance notice to the bridge tender.

Dated: October 16, 2002.

Greg Shapley,

Chief, Bridge Administration Branch, Seventh Coast Guard District.

[FR Doc. 02–27372 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH42

Evidence for Accrued Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations dealing with accrued benefits, those benefits to which an individual was entitled under existing ratings or decisions, or those based on ''evidence in the file at date of death,'' which were due and unpaid at the time the individual died. ''Evidence in the file at date of death'' is now interpreted as evidence in VA's possession on or before the date of the beneficiary's death, even if such evidence was not physically located in the VA claims folder on or before the date of death. Further, ''evidence necessary to complete the application'' for accrued benefits is now interpreted as information necessary to establish that the claimant is within the category of eligible persons and that circumstances exist which make the claimant the specific person entitled to the accrued benefits. These amendments reflect our interpretation of the governing statute.

DATES: Effective Date: November 27, 2002.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7213. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On March 4, 2002, we published in the **Federal Register** (67 FR 9638–9640) a proposed rule to amend the adjudication regulations to define the terms ''evidence in the file at date of death'' and ''evidence necessary to complete the application'' for the purpose of accrued benefits.

We are also correcting a technical error we made in the second amendatory language instruction of the proposed rule. We proposed to revise ''paragraph (d)(4) *introductory text*,'' (emphasis added) 67 FR 9640, whereas we meant to revise paragraph (d)(4) in its *entirety* (emphasis added). Despite the error in the amendatory instruction, our intent was clearly indicated in the **SUPPLEMENTARY INFORMATION** discussion of the proposed rule. There, we explained that ''38 CFR 3.1000(d)(4) purports to define 'evidence in the file at date of death,''' but rather provides that VA may accept identifying, corroborating, or verifying information from certain evidence. 67 FR 9639. Further, we stated that we proposed ''to revise § 3.1000(d)(4) to define 'evidence in the file at the (sic) date of death.''' 67 FR 9639. Accordingly, in this final rule, we revise paragraph (d)(4) in its entirety to conform with the explanation given in the preamble to the proposed rule.

We requested interested persons to submit comments on or before May 3, 2002. We received no comments. Based on the rationale set forth in the proposed rule, we are adopting the proposed rule as a final rule without change.

Unfunded Mandates

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

Paperwork Reduction Act

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

Executive Order 12866

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

Regulatory Flexibility Act

The Secretary certifies that the adoption of the final rule will not have

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

Catalog of Federal Domestic Assistance Program Numbers

The catalog of Federal Domestic Assistance program numbers for this final rule are 64.104, 64.105, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: August 21, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.1000 is amended by revising the section heading, paragraph (c)(1), and paragraph (d)(4) , to read as follows:

§ 3.1000 Entitlement under 38 U.S.C. 5121 to benefits due and unpaid upon death of a beneficiary.

* * * * *

(c) * * *

(1) If an application for accrued benefits is incomplete because the claimant has not furnished information necessary to establish that he or she is within the category of eligible persons under the provisions of paragraphs (a)(1) through (a)(4) or paragraph (b) of this section and that circumstances exist which make the claimant the specific person entitled to payment of all or part of any benefits which may have accrued, VA shall notify the claimant:

(i) Of the type of information required to complete the application;

(ii) That VA will take no further action on the claim unless VA receives the required information; and

(iii) That if VA does not receive the required information within 1 year of the date of the original VA notification of information required, no benefits will be awarded on the basis of that application.

* * * * *

(d) * * *

(4) *Evidence in the file at date of death* means evidence in VA's possession on or before the date of the beneficiary's death, even if such evidence was not physically located in the VA claims folder on or before the date of death.

* * * * *

[FR Doc. 02–27407 Filed 10–25–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–7399–1]

OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA.

EFFECTIVE DATE: This final rule is effective October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Marcia B. Mia, 202–564–7042; *mia.marcia@epa.gov*

SUPPLEMENTARY INFORMATION: EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements promulgated under the Consolidated Federal Air Rule, (CAR) which appeared in the **Federal Register** on December 14, 2000 at 65 FR 78285. The amendment also updates the table to list the information collection requirements approved by OMB on August 31, 2002 under control number 2060–0443 for the consolidation of the ICR's for the referencing subparts of the CAR into the CAR ICR as follows: 40 CFR part 60, subpart Ka; 40 CFR part 60, subpart Kb; 40 CFR part 60, subpart VV; 40 CFR part 60, subpart DDD; 40 CFR part 60, subpart III; 40 CFR part 60, subpart NNN; 40 CFR part 60, subpart RRR; 40 CFR part 61, subpart BB; 40 CFR part 61, subpart Y; 40 CFR part 61, subpart V; 40 CFR part 63, subpart F; 40 CFR part 63, subpart G; 40 CFR part 63, subpart H; and 40 CFR part 63, subpart I. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

These ICRs were previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment.

I. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an

environmental standard intended to mitigate health or safety risks.

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, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of October 28, 2002. 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 17, 2002.

Oscar Morales,

Director, Collection Strategies Division, Office of Information Collection.

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by:

a. Adding an entry title and citations for the ICR for 40 CFR part 65 under the heading ''Consolidated Federal Air Rule'; and

b. Revising entries 60.113a–60.115a, 60.113b–60.116b, 60.482–2, 60–482–3, 60.482–4, 60.482–7, 60.482–8, 60.482–10, 60.483–1, 60.483–2, 60.484–60.487, 60.562–1, 60.562–2, 60.563–60.565, 60.613–60.615, 60.663–60.665, 60.703–60.705 under the heading ''Standards of Performance for New Stationary Sources''; 61.242–1, 61.242–2, 61.242–3, 61.242–4, 61.242–7, 61.242–8, 61.242–10, 61.242–11, 61.243–1, 61.243–2, 61.244–61.247, 61.271–61.276, 61.300, 61.302–61.305, under the heading ''National Emission Standards for Hazardous Air Pollutants'; and 63.103, 63.105, 63.117–63.118, 63.122–63.123, 63.129–63.130, 63.146–63.148, 63.151–63.152, 63.181–63.182 under the heading ''National Emission Standards for Hazardous Air Pollutants for Source Categories'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

40 CFR citation	OMB control no.
* * * * *	
Standards of Performance New Stationary Sources [1]	
* * * * *	
60.113a–60.115a	2060–0443
60.113b–60.116b	2060–0443
* * * * *	
60.482–2	2060–0443
60.482–3	2060–0443
60.482–4	2060–0443
60.482–7	2060–0443
60.482–8	2060–0443
60.482–10	2060–0443
60.483–1	2060–0443
60.483–2	2060–0443
60.484–60.487	2060–0443
* * * * *	
60.562–1	2060–0443
60.562–2	2060–0443
60.563–60.565	2060–0443
* * * * *	
60.613–60.615	2060–0443
* * * * *	
60.663–60.665	2060–0443
* * * * *	
60.703–60.705	2060–0443
* * * * *	
National Emission Standards for Hazardous Air Pollutants [2]	
* * * * *	
61.242–1	2060–0443
61.242–2	2060–0443
61.242–3	2060–0443
61.242–4	2060–0443
61.242–7	2060–0443
61.242–8	2060–0443
61.242–10	2060–0443
61.242–11	2060–0443
61.243–1	2060–0443
61.243–2	2060–0443
61.244–61.247	2060–0443
* * * * *	
61.271–61.276	2060–0443
61.300	2060–0443
61.302–61.305	2060–0443
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories [3]	
* * * * *	
63.103	2060–0443
63.105	2060–0443
63.117–63.118	2060–0443
63.122–63.123	2060–0443
63.129–63.130	2060–0443
63.146–63.148	2060–0443
63.151–63.152	2060–0443
63.181–63.182	2060–0443
* * * * *	
Consolidated Federal Air Rule	
65.5	2060–0443
65.6	2060–0443
65.47	2060–0443
65.48	2060–0443
65.66	2060–0443
65.63	2060–0443
65.67	2060–0443
65.83	2060–0443
65.87	2060–0443
65.102	2060–0443
65.103–65.106	2060–0443
65.109	2060–0443
65.111	2060–0443
65.117–65.120	2060–0443
65.159	2060–0443
65.160	2060–0443
65.162	2060–0443
65.163	2060–0443
65.164	2060–0443
65.165	2060–0443
65.166	2060–0443
* * * * *	

[1] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 60, subpart A, which are not independent information collection requirements.

[2] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 61, subpart A, which are not independent information collection requirements.

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

[FR Doc. 02–27140 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–01–48–7174a; A–1–FRL–7376–5]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Prevention of Significant Deterioration (PSD) of Air Quality Permit Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. The revision consists of a new rule, PART Env-A 623, ''Prevention of Significant Deterioration (PSD) of Air Quality Permitting,'' that adopts into New Hampshire's SIP the federal PSD program provisions. The SIP revision also amends New Hampshire's permit procedural rule, PART Env-A 205, ''Permit Notice and Hearing Procedures: Temporary Permits and Permits to Operate,'' to make the rule consistent with the new state PSD rule. The approval of this revision will make the New Hampshire PSD program consistent with the federal plan requirements for a SIP-approved PSD program. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule is effective on December 27, 2002 without further notice, unless EPA receives adverse comment by November 27, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Steven A. Rapp, Manager, Air Permits, Toxics and Indoor Programs, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA-New England, 1 Congress Street—Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108, 1301 Constitution Avenue, NW., Washington DC; and the Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Brendan McCahill, (617) 918–1652; email at *McCahill.Brendan@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 6, 2001, the State of New Hampshire submitted a formal request to revise its State Implementation Plan (SIP). This notice approves New Hampshire's submitted revisions and solicits comments on this approval. The SIP revision adopts into New Hampshire's SIP the federal PSD program provisions as set forth in 40 CFR 52.21. The SIP revision also amends two sections of New Hampshire's permit procedural rules required to implement the new state PSD program; Part Env-A 205.03, ''Applications Subject to PSD Requirements,'' and Part-A 205.04, ''Applications Subject to Nonattainment Requirements.'' Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

I. Summary of SIP Revision

The following table summarizes the contents of this document.

Table of Contents

I.A: What is the PSD Program?
I.B: What is the history of the PSD program in New Hampshire?
I.C: How will New Hampshire's SIP-approve PSD program under 40 CFR 51.166 differ from the delegated PSD program under 40 CFR 52.21?
II. Final Action
III. Administrative Requirements

I.A: What Is the PSD Program?

The Clean Air Act (CAA) requires new major sources and major modifications to major sources to obtain an air pollution permit before commencing construction. The PSD program is the set of regulations specifying the minimum permit requirements for new major sources or major modifications in areas that are in attainment of the national ambient air quality standards (NAAQS). The PSD program includes two major elements: (1) provisions for an air quality analysis that ensure new major sources or modifications do not violate NAAQS or applicable air quality increments and; (2) provisions for Best Available Control Technology (BACT) that require sources to install air pollutant controls and/or implement pollution reduction operations.

I.B: What Is the History of the PSD Program in New Hampshire?

In a March 18, 1982 letter to the Director of the New Hampshire Air Resources Agency, EPA delegated to New Hampshire the administrative provisions of the Federal PSD program under 40 CFR 52.21. Under the terms of the delegation, New Hampshire was responsible for: (1) receiving and processing PSD applications and (2) developing the preliminary determination and draft permit that documents New Hampshire's technical findings regarding the air impact analysis and BACT requirements. New Hampshire would then forward the preliminary determination and draft permit to EPA for final issuance. EPA retained authority to issue and enforce the final PSD permit.

On January 28, 1999, the New Hampshire Department of Environmental Services, Air Resources Division (ARD), submitted a SIP revision that consists of a new rule, PART Env-A 623, ''Prevention of Significant Deterioration of Air Quality Permitting. The submittal was intended to adopt into New Hampshire's SIP the federal PSD program provisions as set forth in 40 CFR 52.21. However, due to issues with the federal citations referenced in the submittal, EPA could not fully approve the rule and therefore, did not take action on the submittal.

In a November 27, 2000 letter to the Regional Administrator, the ARD formally withdrew its January 28, 1999 SIP revision and requested full delegation to implement the federal PSD rules at 40 CFR 52.21 including the authority to issue and enforce PSD permits. In addition, the ARD requested authority to enforce PSD permits already issued by EPA. On July 9, 2001, EPA Region I approved the ARD's request to accept full delegation of the PSD program under 40 CFR 52.21.

On August 6, 2001, the ARD submitted SIP revisions that consist of new rule, PART Env-A 623 ''Permit Notice and Hearing Procedures: Temporary Permits and Permits to Operate,'' that adopts into New Hampshire's SIP the federal PSD program provisions as set forth in 40 CFR 52.21. New Hampshire is also revising portions of its permit procedural rules, Env-A 205, ''Permit Notice and Hearing Procedures: Temporary Permits and Permits to Operate,'' to make these rules consistent with the new state PSD rule.

I.C: How Will New Hampshire's SIP-Approve PSD Program Under 40 CFR 51.166 Differ From the Delegated PSD Program Under 40 CFR 52.21?

There are two sets of PSD regulations. The first set, 40 CFR 51.166, specifies the minimum requirements that a State PSD air quality permit program under Part C of Title I of the CAA must contain in order to obtain approval by EPA as a revision to the SIP. The second set, 40 CFR 52.21, delineates the federal PSD program, which applies as part of the SIP for states that have not submitted a PSD program that meets the requirements of 40 CFR 51.166. New Hampshire's SIP revision PART Env-A 623 adopts by reference into the State's SIP portions of the federal PSD program as promulgated in 40 CFR 52.21. By adopting portions of the federal PSD program as well as certain other provisions, PART Env-A 623 satisfies the minimum plan approval requirements for a PSD program under 40 CFR 51.166.

Since the state's new PSD program includes all the federal PSD program elements, the state program requirements will be equivalent to the federal program. However, New Hampshire adopted public participation and permit appeal procedural requirements that are specific to the state in place of procedures under the federal program. The federally delegated PSD program follows the public participation procedural requirements found in EPA's consolidated permit procedure regulation at 40 CFR part 124. The federal consolidated permit process regulation addresses, among other things, the appeal process for several EPA permitting programs including the PSD program. The regulation requires that petitions of PSD permit decisions be addressed to Federal Environmental Appeals Board (EAB).

Under the SIP-approved PSD program, the appeal process follows the state's permit procedural rules for state-issued permits. With approval of New Hampshire's PSD rules, persons aggrieved by a PSD permit decision will now direct permit appeals to New Hampshire's Air Resources Council as required by the state's permit procedural requirements. If the Air Resources Council denies the appeal, the petitioner may request the state supreme court to hear the appeal.

EPA notes that New Hampshire's pending SIP-approved PSD rule did not define a date of the incorporated rule revision of 40 CFR 52.21. Without this date, New Hampshire believes its PSD rules will automatically incorporate and implement all future revisions to 40 CFR 52.21 without the need for additional state rulemaking. Typically, states need to revise their SIP-approved rules to comply with any revisions made to underlying federal rules.

II. Final Action

EPA is approving New Hampshire's PART Env-A 623, ''Prevention of Significant Deterioration (PSD) of Air Quality Permit Requirements.'' In addition, EPA is approving New Hampshire's Part Env-A 205.03, ''Applications Subject to PSD Requirements,'' and Part-A 205.04, ''Applications Subject to Nonattainment Requirements'' adopted by the state on February 17, 1995 and amended on July 23, 2001.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective December 27, 2002 without further notice unless the Agency receives relevant adverse comments by November 27, 2002.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 27, 2002 and no further action will be taken on the proposed rule.

III. Administrative Requirements

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 2002. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 3, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

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

PART 52—[AMENDED]

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

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

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(60) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(60) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division August 6, 2001 and April 26, 1995.

(i) Incorporation by reference.

(A) Section 623.01 and sections 623.03 through 623.06 of New Hampshire's rule PART Env-A 623 rule entitled, ''Prevention of Significant Deterioration (PSD) Of Air Quality Permit Requirements.'' This regulation was adopted in the State of New Hampshire on July 23, 2001.

(B) New Hampshire's rules PART Env-A 205.03, ''Applications Subject to PSD Requirements,'' and PART Env-A 205.04, ''Applications Subject to Nonattainment Requirements.'' These regulations were adopted in the State of New Hampshire on February 22, 1995 and amended on July 23, 2001.

(ii) Additional materials.

(A) Letter from the New Hampshire Air Resources Division dated August 6, 2001 submitting a revision to the New Hampshire State Implementation Plan.

(B) Letter from the New Hampshire Air Resources Division dated April 26, 1995 submitting a revision to the New Hampshire State Implementation Plan.

(C) Nonregulatory portions of the State submittal.

3. In § 52.1525, Table 52.1525 is amended by adding new entries to existing state citations for PART Env-A 200 and PART Env-A 600 to read as follows:

§ 52.1525—EPA-approved New Hampshire state regulations.

* * * * *

TABLE 52.1525—EPA-APPROVED RULES AND REGULATIONS [1]—NEW HAMPSHIRE

Title/subject	State citation chapter [2]	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Explanations
*	*	*		*	*	*
Procedural Rules	Env-A 200	2/17/95 & 7/23/01	10/28/02	67 FR 65710	(c)(60)	Approving Env-A 205.03 & Env-A 205.04 as amended 7/23/01
*	*	*		*	*	*
Statewide Permitting System.	Env-A 600	7/23/01	10/28/02	67 FR 65710	(c)(60)	Adding Part Env-A 623: New Hampshire's PSD permit requirements.
*	*	*		*	*	*

[1] These regulations are applicable statewide unless otherwise noted in the Explanation section.

[2] When the New Hampshire Department of Environmental Services was established in 1987, the citation chapter title for the air regulations changed from CH Air to Env-A.

4. Section 52.1529 is revised to read as follows:

§ 52.1529 Significant deterioration of air quality.

New Hampshire's Part Env-A 623, ''Requirements for Prevention of Significant Deterioration Permits,'' as submitted on August 6, 2001, is approved as meeting the requirements of Subpart 1, Part C, Title I, of the Clean Air Act.

[FR Doc. 02–25857 Filed 10–25–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket # ID–02–001; FRL–7398–1]

Approval and Promulgation of Air Quality Implementation Plans; State of Idaho; Northern Ada County Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On January 17, 2002, the State of Idaho requested EPA to redesignate the Northern Ada County ''not classified'' carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS) and submitted a CO maintenance plan for Northern Ada County. In this action, EPA is approving the maintenance plan and redesignating the Northern Ada County CO nonattainment area to attainment.

DATES: This direct final rule will be effective December 27, 2002, unless EPA receives adverse comments by November 27, 2002. If relevant adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. Please note that if EPA receives relevant adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

ADDRESSES: Written comments may be mailed to: Steve Body, State and Tribal Programs Unit, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the United States Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle WA.

FOR FURTHER INFORMATION CONTACT: Steve Body, State and Tribal Programs Unit, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle WA., 98101, Telephone number: (206) 553–0782.

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I. What Is the Purpose of This Action?

EPA is redesignating the Northern Ada County ''not classified'' CO nonattainment area from nonattainment to attainment and approving the maintenance plan that will keep the area in attainment for the next 10 years.

EPA originally designated the Northern Ada County area as nonattainment for CO under the provisions of the 1977 Clean Air Act (CAA) Amendments (see 43 FR 8962, March 3, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the CAA, the Northern Ada County area was designated nonattainment for CO by operation of law because the area had been designated as nonattainment before November 15, 1990. The Northern Ada County area is classified as an unclassified, or ''not classified'' CO nonattainment area because there were no violations of the CO standard in 1988 or 1989 prior to the 1990 Clean Air Act Amendments.

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA provides the requirements for redesignation. These are:

(i) The Administrator determines that the area has attained the national ambient air quality standard;

(ii) The Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the Act;

(iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions;

(iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) the State containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before an area can be redesignated to attainment, all applicable State Implementation Plan (SIP) elements must be fully approved.

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

The CAA requires States to follow certain procedural requirements for submitting SIP revisions to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted by the State after reasonable notice and public hearing. The State then submits the SIP revision to EPA for approval.

The Idaho Department of Environmental Quality (IDEQ), which has regulatory authority for sources of air pollution in the Northern Ada County CO nonattainment area, developed the CO maintenance plan. On October 23, 2001, IDEQ notified the public of the public hearing on the plan. On November 27, 2001 IDEQ held the public hearing at their offices in Boise, Idaho. On January 17, 2002, the State of Idaho adopted the *Limited Maintenance Plan for the Northern Ada County Carbon Monoxide Not-Classified Nonattainment area.* On January 17, 2002, the State submitted the proposed SIP to EPA. EPA has determined that

the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

III. EPA's Evaluation of the Redesignation Request and Maintenance Plan

EPA has reviewed the State's maintenance plan and redesignation request and is approving the maintenance plan and redesignating the area to attainment consistent with the requirements of CAA section 107(d)(3)(E). The following is a summary of EPA's evaluation and a description of how each requirement is met.

(a) The Area Must Have Attained the Carbon Monoxide NAAQS

Section 107(d)(3)(E)(i) requires that the Administrator determine that the area has attained the applicable NAAQS. The primary NAAQS for CO is 9 parts per million (ppm) (10 milligrams per cubic meter) for an 8-hour average, not to be exceeded more than once per year as determined at each monitoring site in the area. CO in the ambient air is measured by a reference method based on 40 CFR part 50, Appendix C. EPA considers an area as attaining the CO NAAQS when all of the CO monitors in the area have an exceedance rate of 1.0 or less each calendar year over a two-calendar year period. (*See* 40 CFR 50.8 and 40 CFR part 50 Appendix C.) EPA's interpretation of this requirement is that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least two consecutive calendar years (September 4, 1992, John Calcagni policy memorandum ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (''Calcagni Memorandum'')). In addition, the area must continue to show attainment through the date that EPA promulgates redesignation to attainment.

Idaho's CO redesignation request for the Northern Ada County area is based on valid ambient air quality data. Ambient air quality monitoring data for calendar years 1987 through 2001 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year at all monitoring sites. These data were collected and analyzed as required by EPA (*see* 40 CFR 50.8 and 40 CFR part 50, Appendix C) and have been stored in EPA's Aerometric Information and Retrieval System (AIRS). These data have met minimum quality assurance requirements and have been certified by the State as being valid before being included in AIRS. EPA's evaluation of the ambient air quality data finds that the Northern Ada County area has not violated the CO standard since 1987.

(b) The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. EPA interprets this requirement to mean the State must meet all requirements that applied to the area prior to, or at the time of, the submission of a complete redesignation request.

1. CAA Section 110 Requirements

On January 31, 1972, Idaho submitted the SIP to EPA. EPA approved the SIP on May 31, 1972. See 37 FR 10861. Although section 110 of the CAA was amended in 1990, most of the changes were not substantial. Thus, we have determined that the SIP revisions approved in 1972 along with subsequent revisions that we have previously approved, continue to satisfy the requirements of section 110(a)(2). EPA has analyzed the SIP elements that are part of this action and determined they comply with the requirements of section 110(a)(2).

2. Part D Requirements

The Northern Ada County area was originally designated as nonattainment for CO on March 3, 1978 (see 43 FR 8962). Idaho's CAA Part D initial plan for the Northern Ada County CO nonattainment area was submitted on January 31, 1980, and approved by EPA on October 23, 1980. Idaho subsequently revised the nonattainment area plan and submitted that revision to EPA in 1984 and it was approved by EPA on June 5, 1985. A final revision was made to the plan and submitted to EPA June 29, 1994 and approved by EPA on December 1, 1994. See 59 FR 61546.

Prior to the 1990 CAA Amendments, EPA had begun development of its post-1987 policy for carbon monoxide; however, EPA did not finalize the post-1987 policy for CO because the Clean Air Act (CAA) was amended on November 15, 1990. Under section 107(d)(1)(C) of the CAA, the Northern Ada County area was by operation of law designated nonattainment for CO because the area had been previously designated nonattainment before November 15, 1990. In the November 6, 1991, **Federal Register**, (56 FR 56694) the Northern Ada County area was classified as a ''not classified'' CO nonattainment area as the area had not violated the CO NAAQS in 1988 or 1989.

Before the Northern Ada County ''not classified'' CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or not classified.

The relevant Subpart 1 requirements are contained in sections 172(c) and 176 of the Act. The April 16, 1992, General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (*see* 57 FR 13498) (''General Preamble of April 16, 1992'') provides our interpretation of the CAA requirements for not classified CO areas (see specifically 57 FR 13535). The General Preamble of April 16, 1992, reads, ''Although it seems clear that the CO-specific requirements of subpart 3 of part D do not apply to CO ''not classified'' areas, the 1990 CAAA are silent as to how the requirements of subpart 1 of part D, which contains general SIP planning requirements for all designated nonattainment areas, should be interpreted for such CO areas. Nevertheless, because these areas are designated nonattainment, some aspects of subpart 1 necessarily apply.''

Under section 172(b), the applicable section 172(c) requirements, as determined by the Administrator, were due no later than three years after an area was designated as nonattainment under section 107(d) of the amended CAA (see 56 FR 56694, November 6, 1991). In the case of the Northern Ada County area, the due date was November 15, 1993. Since the Northern Ada County CO redesignation request and maintenance plan were not submitted by Idaho until January 17, 2002, the General Preamble of April 16, 1992, provides that the applicable requirements of CAA section 172 are: 172(c)(3) (emissions inventory), 172(c)(5)(new source review permitting program), and 172(c)(7)(the section 110(a)(2) air quality monitoring requirements). *See* 57 FR 13535, April 16, 1992.

EPA has determined that the Part D requirements for Reasonably Available Control Measures (RACM), an attainment demonstration, reasonable further progress (RFP), and contingency measures (CAA section 172(c)(9)) are not applicable to ''not classified'' CO nonattainment areas. See 57 FR 13535, April 16, 1992.

Section 176 of the CAA contains requirements related to conformity. Although federal regulations (see 40 CFR 51.396) require that states adopt

transportation conformity provisions in their SIPs for areas designated nonattainment or that are subject to a federally approved maintenance plan, EPA has determined that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in our 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

The remaining applicable requirements of CAA section 172 are discussed below.

A. Section 172(c)(3) Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the Northern Ada County CO nonattainment area. The emission inventory requirement for ''not classified'' CO nonattainment areas is detailed in the General Preamble of April 16, 1992. EPA has determined that an emissions inventory is required by CAA section 172(c)(3) regardless of air quality levels. An emissions inventory must be included as a revision to the SIP and was due three years from the time of the area's designation. For ''not classified'' CO areas, this date is November 15, 1993. To address the section 172(c)(3) requirement for a ''current'' inventory, EPA interpreted ''current'' to mean calendar year 1990 (see 57 FR 13502, April 16, 1992).

Idaho included in the January 17, 2002, proposed SIP revision, a Northern Ada County CO emission inventory for calendar year 1995. This year corresponds to the year used in calculating the design value contained in the SIP. The inventory has been reviewed by EPA and a copy of that review is in the docket to this action. EPA believes the inventory is comprehensive, accurate and current and meets the requirements of section 172(c)(3) of the CAA. It represents emissions that contributed to the design value in the plan. The design value shows that the area attains the CO standard. Therefore the emissions are at a level that would maintain the standard.

The requirements of section 172(c)(3) are met.

B. Section 172(c)(5) New Source Review (NSR)

The Clean Air Act Amendments of 1990 included revisions to the new source review (NSR) program requirements of the construction and operation of new and modified major stationary sources located in nonattainment areas. The Act requires states to amend their SIPs to reflect these revisions, but it did not require submittal of this element along with the other SIP elements. The Act established June 30, 1992 as the submittal date for the revised NSR programs. See Section 189(a) of the Act.

In the General Preamble of April 16, 1992, EPA issued guidance for states to follow in the development of revised programs to meet the requirements of the 1990 Amendments. EPA guidance calls for states to implement their existing NSR programs during the interval preceding our formal approval of their revised NSR programs.

The State of Idaho submitted to EPA on September 4, 1992, rules that met the requirements of the 1990 Clean Air Act Amendments and EPA approved those rules on July 23, 1993. *See* 58 FR 39445.

The requirements of section 172(c)(5) are met.

C. Section 172(c)(7) Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements

According to the General Preamble of April 16, 1992, ''not classified'' CO nonattainment areas should meet the ''applicable'' air quality monitoring requirements of section 110(a)(2) of the CAA. The State of Idaho has operated a CO monitor in the Northern Ada County area since the early 1970's. In this proposed SIP revision, the State of Idaho further commits to operating the CO monitoring network into the future.

The requirements of section 172(c)(7) are met.

(c) The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) of the CAA provides that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Based on the approval into the SIP of provisions under the pre-1990 CAA, our prior approval of a SIP revision required under the 1990 amendments to the CAA, and our approval of the State's commitment to maintain an adequate monitoring network, EPA has determined that, as of the date of this **Federal Register** action, Idaho has a fully approved CO SIP under section 110(k) for the Northern Ada County CO nonattainment area.

(d) The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emission Reductions

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The CO emissions reductions for the Northern Ada County area were achieved through a number of control measures. The primary emission reductions are the result of the Federal Motor Vehicle Emission Standards and fleet turnover. These reductions will continue into the maintenance period for the Northern Ada County area. There are several additional control measures including transportation control measures (transit, rideshare and I&M), stationary source controls through the NSR program, and several voluntary measures. Lastly, there are woodstove curtailment programs designed for particulate matter control during episodes of poor air quality that will provide reduction in CO emissions.

EPA has evaluated the various State and Federal control measures and the 1995 emission inventory, and we conclude that the improvement in air quality in the Northern Ada County nonattainment area has resulted from emission reductions that are permanent and enforceable.

(e) The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. For areas such as Northern Ada County that are utilizing EPA's limited maintenance plan approach, as detailed in the EPA guidance memorandum, ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality and Planning Standards, dated October 6,

1995 (''Paisie Memorandum''), the maintenance plan demonstration requirement is considered to be satisfied for ''not classified'' areas if the monitoring data show the design value is at or below 7.65 ppm, or 85 percent of the level of the 8-hour CO NAAQS. The design value must be based on the 8 consecutive quarters of data. There is no requirement to project emissions or air quality over the maintenance period. EPA believes if the area begins the maintenance period at, or below, 85 percent of the level of the CO 8 hour NAAQS, the applicability of PSD requirements, the control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period. In addition, the design value for the area must continue to be at or below 7.65 ppm until the time of final EPA action on the redesignation. The method for calculating the design value is presented in the June 18, 1990, EPA guidance memorandum entitled ''Ozone and Carbon Monoxide Design Value Calculations'', from William G. Laxton, Director of the OAQPS Technical Support Division, to Regional Air Directors.

Eight years after redesignation to attainment, the State must submit a revised maintenance plan that demonstrates continued maintenance of the CO NAAQS for an additional 10 years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation.

The analysis of the pertinent maintenance plan requirements follows:

1. Emissions Inventory—Attainment Year

The plan must contain an attainment year emissions inventory to identify the level of emissions in the area which is sufficient to attain the CO NAAQS. This inventory is to be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time [1] and should represent emissions during the time period associated with the monitoring data showing attainment. The Northern Ada County CO maintenance plan contains an accurate, current, and comprehensive emission inventory for calendar year 1995.

2. Demonstration of Maintenance

As described in the Paisie Memorandum, the maintenance plan demonstration requirement is considered to be satisfied for ''not classified'' CO areas if the design value for the area is equal to, or less than 7.65 ppm. The CO design value for 1995 for the Northern Ada County area is 7.4 ppm, and the design value for 1996 is 4.9 ppm both of which are below the limited maintenance plan requirement of 7.65 ppm. Therefore, the Northern Ada County area has adequately demonstrated maintenance.

3. Monitoring Network and Verification of Continued Attainment

Continued ambient monitoring of an area is required over the maintenance period. Section VI(C) of the Northern Ada County CO maintenance plan provides for continued ambient monitoring in the area.

4. Contingency Plan

The Northern Ada County CO Limited Maintenance plan contains a contingency plan that would institute an oxygenated fuels program or other equivalent transportation control measure. The contingency plan is triggered either when an exceedance of the level of the 8 hour standard is recorded and any monitor, or when a monitor records non-overlapping 8 hour CO concentrations of 8 parts per million (ppm) on 4 or more days within a single winter season within the nonattainment area. EPA finds that the contingency measures provided in the maintenance plan are adequate to ensure prompt correction of a violation.

IV. Conformity

A. How Is Transportation Conformity Demonstrated to a Limited Maintenance Plan?

Section 176(c) of the Act defines transportation conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that no Federal transportation activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Federal Transportation Conformity Rule, 40 CFR parts 51 and 93, applies to all nonattainment and maintenance areas. As prescribed by the conformity rule, once an area has an applicable state implementation plan with motor vehicle emissions budgets, the expected emissions from planned transportation activities must be consistent with (''conform to'') such established budgets for that area. In the case of the Northern Ada County CO limited maintenance plan, however, the emissions budgets may be treated as essentially not constraining for the length of the initial maintenance period because there is no reason to expect that Northern Ada County will experience so much growth in that period that a violation of the CO air quality standard would result. In other words, emissions from on-road transportation sources need not be capped for the maintenance period because it is unreasonable to believe that emissions from such sources would increase to a level that would threaten the air quality in this area for the duration of this maintenance period.

Therefore, for the Northern Ada County CO maintenance area all federally funded and approved transportation actions that require conformity determinations under the transportation conformity rule can already be considered to satisfy the regional emissions analysis and ''budget test'' requirements in 40 CFR 93.118 of the rule. However, since Northern Ada County is still a maintenance area, transportation conformity determinations are still required for transportation plans, programs, and projects. Specifically, for such determinations, transportation plans, TIPs, and projects must still demonstrate that they are fiscally constrained (40 CFR part 108) and must meet the criteria for consultation and TCM implementation in the conformity rule (40 CFR 93.112 and 40 CFR 93.113). In addition, projects in Northern Ada County will still have to meet the criteria for CO hot spot analyses (40 CFR 93.116 and 40 CFR 93.123) that must incorporate the latest planning assumptions and models that are available.

B. What Is the Adequacy Status of This Limited Maintenance Plan?

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision on EPA's third set of conformity revisions in response to a case brought by the Environmental Defense Fund. This

[1] The October 6, 1995, limited maintenance plan guidance memorandum states that current guidance on the preparation of emissions inventories for CO areas is contained in the following documents: ''Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone: Volume I'' (EPA–450/4–91–016), and ''Procedures for Emission Inventory Preparation: Volume IV, Mobile Sources'' (EPA–450/4–81–026d revised).

decision stated that a conformity determination cannot be made using a submitted motor vehicle emission budget until EPA makes a positive determination that the submitted budget is adequate. In response to the court's decision, EPA issued guidance on our adequacy process on May 14, 1999.

In accordance with our guidance and the court decision, the Northern Ada County limited maintenance plan was posted for adequacy review of the motor vehicle emissions budget on March 20, 2002, on EPA's conformity Web site: *http://www.epa.gov/otaq/traq*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity''). As a general rule, however, limited maintenance plans do not include budgets. Instead, the limited maintenance plan for Northern Ada County concludes that the area will continue to maintain the CO air quality standard regardless of the quantity of emissions from the on-road transportation sector; essentially, the budget is unlimited. Therefore, EPA's adequacy review of the Northern Ada County limited maintenance plan primarily focused on whether the area qualifies for the applicable limited maintenance policy for CO. From our review, EPA has concluded that Northern Ada County does meet the criteria for a limited maintenance plan, and therefore, is able to find this limited maintenance plan adequate for conformity purposes.

C. Are the Requirements for General Conformity Altered Under This Limited Maintenance Plan?

No. Although the requirements to perform a regional emissions analysis and budget test under the transportation conformity rule are altered under a limited maintenance plan, the requirements for general conformity are not changed. Upon today's approval of the Northern Ada County limited maintenance plan, 40 CFR part 93, subpart B General Conformity Rules for federal actions still apply.

V. Final Action

EPA is approving the Northern Ada County CO maintenance plan and redesignating the area to attainment.

VI. Administrative Requirements

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 10, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart N—Idaho

2. Section 52.672 is added to Subpart N to read as follows:

§ 52.672 Approval of plans.

(a) *Carbon Monoxide.* (1) EPA approves as a revision to the Idaho State Implementation Plan, the Limited Maintenance Plan for the Northern Ada County Carbon Monoxide Not-Classified Nonattainment Area, submitted by the State on January 17, 2002.

(2) [Reserved].

(b) *Lead.* [Reserved]

(c) *Nitrogen Dioxide.* [Reserved]

(d) *Ozone.* [Reserved]

(e) *Particulate Matter.* [Reserved]

(f) *Sulfur Dioxide.* [Reserved]

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.313, the table entitled ''Idaho—Carbon Monoxide'' is amended by revising the entry for ''Boise—Northern Ada County'' to read as follows:

§ 81.313 Idaho.

* * * * *

IDAHO—CARBON MONOXIDE

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Boise-Northern Ada County Area:				
The Boise-Ada County nonattainment area is described as follows: Beginning at a point in the center of the channel of the Boise River which the section line between sections fifteen (15) and sixteen (16), Township three (3) north, range four (4) east crosses said river; thence down the center of the channel of the Boise River to a point opposite the mouth of Mores Creek. Thence in a straight line north forty four (44) degrees and 36 minutes west until the said line intersects the north line of Township five (5) north (12 Ter. Ses. 67); thence west to the northwest corner of Township five (5) north, range one (1) west; thence southerly to the northwest corner of Township three (3) north, range one (1) west; thence east to the northwest corner of Section four (4) township three (3) north, range one (1) west; thence south to the southeast corner of section thirty-two (32), township two (2) north, range one (1) west; thence, west to the northwest corner township one (1) north, range one (1) west; thence southerly to the southwest corner of township one (1) north, range one (1) west; thence east to the southwest corner of section thirty-three (33), township one (1) north, range four (4) east; thence in a northerly direction along the north and south centerline of township one (1), two (2) and three (3) north, range four (4) east, Boise Meridian, to a point in the center of the channel of the Boise River where the section line between section fifteen (15) and sixteen (16) township three (3) north, range four (4) east, Boise Meridian crosses said Boise River, the point of beginning.	12/27/02	Attainment.		
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 02–27237 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA—B –7431]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

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

DATES: These modified Base Flood Elevations are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any

person has ninety (90) days in which to request through the community that the Director, Federal Insurance and Mitigation Administration, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified Base Flood Elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

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

SUPPLEMENTARY INFORMATION: The modified Base Flood Elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified Base Flood Elevation determinations are available for inspection is provided.

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

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

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

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

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

The changes in Base Flood Elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	Town of Carefree (01–09–1157P), (02–09–1409X).	August 29, 2002; September 5, 2002; *Arizona Business Gazette*.	The Honorable Edward C. Morgan, Mayor, Town of Carefree P.O. Box 740, Carefree, Arizona 85377.	December 5, 2002	040126
Maricopa	Town of Cave Creek (01–09–1157P), (02–09–1409X).	August 29, 2002; September 5, 2002; *Arizona Business Gazette*.	The Honorable Vincent Francia, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, Arizona 85331.	December 5, 2002	040129
Maricopa	City of Chandler (02–09–248P).	July 24, 2002; July 31, 2002; *Arizona Republic*.	The Honorable Jay Tibshraeny, Mayor, City of Chandler, 55 North Arizona Place, Chandler, Arizona 85225.	October 30, 2002	040040
Maricopa	City of Scottsdale (01–09–1157P), (02–09–1409X).	August 29, 2002; September 5, 2002; *Arizona Business Gazette*.	The Honorable Mary Manross, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, Arizona 85251.	December 5, 2002	045012
Maricopa	Unincorporated Areas (02–09–068P).	September 5, 2002; September 12, 2002; *Arizona Business Gazette*.	The Honorable Don Stapley, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	August 21, 2002	040037

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Pima	City of Tucson (02–09–1050P).	September 18, 2002; September 25, 2002; *Daily Territorrial*.	The Honorable Robert Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona, 85726.	September 11, 2002	040076
Pima	Unincorporated Areas (02–09–1007P).	September 19, 2002; September 26, 2002; *Arizona Daily Star*.	The Honorable Raul Grijalva, Chairman, Pima County , Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	September 9, 2002	040073
California:					
Alameda	City of Dublin, (00–09–931P).	July 26, 2002; August 2, 2002; *Tri-Valley Herald*.	The Honorable Janet Lockhart, Mayor, City of Dublin, 100 Civic Plaza, Dublin, California 94568.	November 1, 2002	060705
San Diego	City of San Diego, (00–09–717P).	August 15, 2002; August 22, 2002; *San Diego Union-Tribune*.	The Honorable Richard M. Murphy, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	November 21, 2002	060295
Yolo	City of Winters, (02–09–649P).	August 1, 2002; August 8, 2002; *Winters Express*.	The Honorable Harold Anderson, Mayor, City of Winters, 318 First Street, Winters, California 95694–1923.	July 11, 2002	060425
Colorado:					
El Paso	City of Colorado Springs, (02–08–141P).	August 14, 2002; August 21, 2002; *The Gazette*.	The Honorable Mary Lou Makepeace, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575.	August 6, 2002	080060
El Paso	City of Colorado Springs, (02–08–325P).	September 5, 2002; September 12, 2002; *The Gazette*.	The Honorable Mary Lou Makepeace, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575.	August 21, 2002	080060
Jefferson	City of Golden (02–08–185P).	August 8, 2002; August 15, 2002; *Denver Post*.	The Honorable Charles J. Baroch, Mayor, City of Golden, 911 10th Street, Golden, Colorado 80401.	November 14, 2002	080090
Jefferson	City of Westminster (02–08–013P).	September 12, 2002; September 19, 2002; *Westminster Window*.	The Honorable Ed Moss, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80031.	December 19, 2002	080008
Jefferson	Unincorporated Areas (02–08–185P).	August 8, 2002; August 15, 2002; *Denver Post*.	The Honorable Michelle Lawrence, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419.	July 23, 2002	080087
Jefferson	Unincorporated Areas (02–08–368P).	September 18, 2002; September 25, 2002; *Canyon Courier*.	The Honorable Michelle Lawrence, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419.	December 25, 2002	080087
Weld	Town of Firestone (01–08–384P).	July 31, 2002; August 7, 2002; *Farmer and Miner*.	The Honorable Michael Simone, Mayor, Town of Firestone, P.O. Box 100, Firestone, Colorado 80520.	November 6, 2002	080241
Weld	Unincorporated Areas (01–08–384P).	July 31, 2002; August 7, 2002; *Greeley Tribune*.	The Honorable Glenn Vaad, Chairman, Weld County Board of Commissioners, P.O. Box 758, Greeley, Colorado 80632–0758.	July 11, 2002	080266
Texas:					
Collin	City of Frisco (00–06–1133P).	February 1, 2002; February 8, 2002; *Frisco Enterprise*.	The Honorable Kathy Seei, Mayor, City of Frisco, City Hall, P.O. Box 1100, Frisco, Texas 75034.	November 2, 2000	480134
Dallas	City of Dallas (99–06–1120P).	January 31, 2002; February 7, 2002; *Dallas Morning News*.	The Honorable Ron Kirk, Mayor, City of Dallas, 1500 Marilla Street, Dallas, Texas 75201.	November 13, 2000	480171
Utah:					
Utah	City of Spanish Fork (01–08–306P).	August 28, 2002; September 4, 2002; *Daily Herald*.	The Honorable Dale Barney, Mayor, City of Spanish Fork, 40 South Main Street, Spanish Fork, Utah 84660.	February 16, 2003	490241

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Utah	Unincorporated Areas (01–08–306P).	August 28, 2002; September 4, 2002; *Daily Herald*.	The Honorable Jerry Grover, Chairman, Utah County Board of Commissioners, County Administration Building, 100 East Center Street, Suite 2300, Provo, Utah 84606.	December 4, 2002	495517

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

Dated: October 17, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–27320 Filed 10–25–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2514, MM Docket No. 01–11, RM–10027, and RM–10322]

Radio Broadcasting Services; Arcadia, Desert Hot Springs, Fallbrook, Murrieta, and Yucca Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 281A to Murrieta, California, as a first local aural service in response to a rulemaking petition filed by Helen Jones. *See* 66 FR 8559, February 1, 2001. The coordinates for Channel 281A at Murrieta are 33–32–55 and 117–09–26. The document also denies a counterproposal filed by Big City Radio-LA, L.L.C., to upgrade Station KLYY(FM), Arcadia, California, from Channel 296A to Channel 296B1. To accommodate the upgrade, the counterproposal also proposed to substitute 281A for Channel 296A for Station KSYY(FM), Fallbrook California, and to downgrade, reallot, and change the community of license of Station KYOR(FM), Channel 295B, Yucca Valley, California, to Channel 295B1 at Desert Hot Springs, California. The staff reasoned that the counterproposal could not be granted because the Commission's policies and rules do not permit pre-1964 grandfathered, short-spaced stations such as KLYY(FM) to upgrade channel class with short-spacings to stations on second or third adjacent FM channels.

DATES: Effective November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 01–11, adopted September 25, 2002, and released October 9, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Murrieta, Channel 281A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–27326 Filed 10–25–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 208 and 216

Training Supporting Implementation of Section 803 of the National Defense Authorization Act for Fiscal Year 2002, Competition Requirements for Purchase of Services Under Multiple Award Contracts

AGENCY: Department of Defense (DoD).

ACTION: Notice of training opportunities.

SUMMARY: The Director, Defense Procurement, is sponsoring two training sessions to support implementation of the Defense Federal Acquisition Regulation Supplement final rule published in the **Federal Register** on October 25, 2002, under DFARS Case 2001-D017, Competition Requirements for Purchase of Services Under Multiple Award Contracts.

DATES: Training will be conducted on October 31, 2002, and on November 12, 2002, from 1–3 p.m.

ADDRESSES: Training will be conducted in the Crystal City area of Arlington, VA, in Room C–43, Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, VA 22202. The room is located on the Underground/Tunnel level and is accessible from the Metro.

FOR FURTHER INFORMATION CONTACT: For information regarding registration for the training sessions or other training issues, contact Ms. Melissa Rider, Procurement Analyst, at *melissa.rider@osd.mil* or (703) 614–3883. For information regarding final rule content, contact the case manager, Ms. Susan Schneider, at (703) 602–0326.

SUPPLEMENTARY INFORMATION: DoD contracting personnel and personnel who develop requirements for service task orders under multiple award vehicles (including Federal Supply Service multiple award schedules), civilian agency personnel who fulfill DoD requirements under the Economy Act, and representatives of companies that have been awarded a multiple award contract for services should attend the training. Civilian agencies must follow the new DoD procedures if they acquire services on behalf of DoD

under multiple award contracts or schedules. Attendance at the training sessions is limited to 60 per session. For those who are unable to attend the training sessions, briefings, including briefer notes, have been posted to the Defense Procurement Web site at *http://www.acq.osd.mil/dp* under the special interest drop down box/Section 803.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 02–27348 Filed 10–25–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 020819201–2201–01; I.D.'s 091401B and 092401E]

RIN 0648–AQ23

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

ACTION: Final rule, technical amendment.

SUMMARY: NMFS is issuing a correction to the interim final rule and final rule implementing the ALWTRP's Seasonal Area Management (SAM) and Dynamic Area Management (DAM) programs, respectively, which were published in the **Federal Register** on January 9, 2002. The purpose of this action is to correct errors in and make minor clarifications to the SAM interim final rule and to the DAM final rule. Some aspects of the SAM and DAM program were inadvertently omitted from the associated regulatory text and this technical amendment makes the regulatory text reflect information provided in the rules' preambles.

DATES: Effective October 28, 2002.

ADDRESSES: Copies of the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Analysis (FRFA), are available from the Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may be obtained by writing Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or Katherine Wang, NMFS, Southeast Region, 9721 Executive Center Dr., St.Petersburg, FL 33702–2432.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS, Northeast Region, 978–281–9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322. Individuals who use a telecommunications device for the deaf (TDD) may call theFederal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excludingFederal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/.* Copies of the most recent marine mammal stock assessment reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at *http://www.wh.whoi.edu/psb/sar2001.pdf.* In addition, copies of the document entitled ''Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options'' and ''Identification of Seasonal Area Management Zones for North Atlantic Right Whale Conservation'' are available by writing to Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or can be downloaded from the Internet at *http://www.nero.nmfs.gov/whaletrp/.*

Background

This final rule modifies the Atlantic Large Whale Take Reduction Plan as deemed necessary by NMFS to satisfy requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). On January 9, 2002, NMFS published a SAM interim final rule (67 FR 1142) and DAM final rule (67 FR 1133) in the **Federal Register**. The purpose of this final rule is to correct errors in and make minor clarifications in the SAM interim final rule and DAM final rule regulatory text. NMFS had discussed the SAM and DAM programs in the preambles to the SAM and DAM rules, however, some aspects of each program were inadvertently omitted from the associated regulatory text.

Corrections

NMFS noted in the preamble to the DAM proposed (66 FR 50160) and final rules (67 FR 1133) that if NMFS decides not to implement restrictions within a DAM zone, it will issue an alert to fishermen requesting that they voluntarily remove lobster trap and anchored gillnet gear from a DAM zone and asking them not to set additional gear inside it. However, NMFS inadvertently omitted this language from the regulatory text section of the DAM rule.

The new and existing SAM gear requirements discussed in the preambles to the SAM proposed and interim final rules are intended to be required in addition to existing requirements for Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, Offshore Lobster Waters, and Other Northeast Gillnet Waters or in place of the existing requirements for those areas to the extent the SAM gear requirements conflict with them. But, text to that effect did not appear in the proposed rule's regulatory text. NMFS noted this discrepancy and intended to correct this oversight in the interim final rule. However, this clarification was also inadvertently omitted from the interim final rule's regulatory text section. Therefore, the regulations are corrected to note that the SAM gear modifications supercede requirements found at existing ALWTRP fishery specific area requirements when they are more restrictive.

The SAM interim final rule also incorrectly defined SAM East to include Point 9, 42&30′ N Lat., 66°50′ W Long., which is outside the Exclusive Economic Zone. This rule removes this point from the regulations and renumbers the remaining points. Also, NMFS clarifies that the gear restriction in § 229.32 (g)(4)(ii)(B) applies in SAM East. While the fact that the gear restrictions in § 229.32(g)(4)(ii)(B) apply in SAM East is clear from the structure of the regulations, NMFS is adding the words ''in SAM East'' for added clarity.

A number of clarifications are made to § 229.32 (g)(4)(i)(B). First, NMFS clarifies that the gear restriction in § 229.32 (g)(4)(i)(B) applies in SAM West. While the fact that the gear restrictions in § 229.32(g)(4)(i)(B) apply in SAM West is clear from the structure of the regulations, NMFS is adding the words ''in SAM West'' for added clarity. Second, NMFS mistakenly omitted from the regulatory text for the SAM interim final rule the following requirements: (1) buoy lines are to be composed entirely of sinking or neutrally buoyant

line; and (2) floating ground lines and buoy lines are prohibited. However, the preambles to the proposed and interim final rules for SAM stated that the ground lines and buoy lines were to be composed entirely of sinking or neutrally buoyant line in SAM areas, and indicated that floating ground lines and buoy lines are prohibited. Thus, the wording at § 229.32 (g)(4)(i)(B)(1) and (g)(4)(i)(B)(*2*) has been changed accordingly to reflect the discussion in the preambles.

Third, NMFS wrote ''sinking ground line'' in the heading at the beginning of § 229.32 (g)(4)(i)(B)(*2*); however, this has been changed to ''ground line'' to clarify the requirement stated in the preambles and the regulatory text following the heading that ground lines be made entirely of sinking or neutrally buoyant line. Fourth, NMFS noted on the SAM Gillnet Gear graphics that five weak links with a breaking strength not to exceed 1,100 lb (498.9 kg) each are required on a net panel. However, the word ''each'' was not in the regulatory text to the SAM interim final rule. Through this rule, § 229.32 (g)(4)(i)(B)(1)(iii) is clarified to indicate that the breaking strength of each weak link on a net panel must not exceed 1,100 lb (498.9 kg).

The SAM interim final rule and associated gear modifications were effective March 1, 2002; however, NMFS mistakenly indicated on the SAM Northern Nearshore and Inshore Lobster Gear and SAM Offshore Lobster Gear graphics (Figures 2 and 3) that the single buoy line requirement was effective January 1, 2003. This correction removes the incorrect effective date from the graphics.

Figure 4 also incorrectly indicated on the SAM Gillnet Gear graphic that the single buoy line requirement was effective January 1, 2003, and described the SAM gillnet gear anchoring system as a 22 lb (9.9 kg) Danforth-style anchor. As noted above, the SAM interim final rule and associated gear modifications were effective March 1, 2002. Additionally, the regulations state that all anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (9.9 kg) Danforth-style anchor at each end of the net string. This language is consistent with the preamble of the proposed and interim final rule for SAM.

Classification

The Assistant Administrator (AA) finds that good cause exists to waive the requirement to provide prior notice and the opportunity for comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be unnecessary. Prior notice and opportunity for comment are unnecessary because the technical amendment to the regulations implementing the SAM and DAM programs merely clarifies NMFS' intent as explained in the preambles to the rules and will have a de minimus effect, if any, on the regulated community. The clarifications do not increase the scope of the regulated community nor add new requirements. Also, because this rule corrects and clarifies provisions and makes non-substantive or de minimus changes to the SAM and DAM regulations good cause exists, under 5 U.S.C. 553(d), not to delay the effective date for 30 days.

Because a general notice of proposed rulemaking is not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. While a Regulatory Flexibility Analysis is not required and none has been prepared for this technical amendment, the economic impacts on affected fisheries of the rules and alternatives to them were considered by NMFS. Copies of the analyses for the SAM interim final rule and the DAM final rule may be obtained from NMFS (see **ADDRESSES**) by requesting copies of the EA/RIRs for each program.

Dated: October 17, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

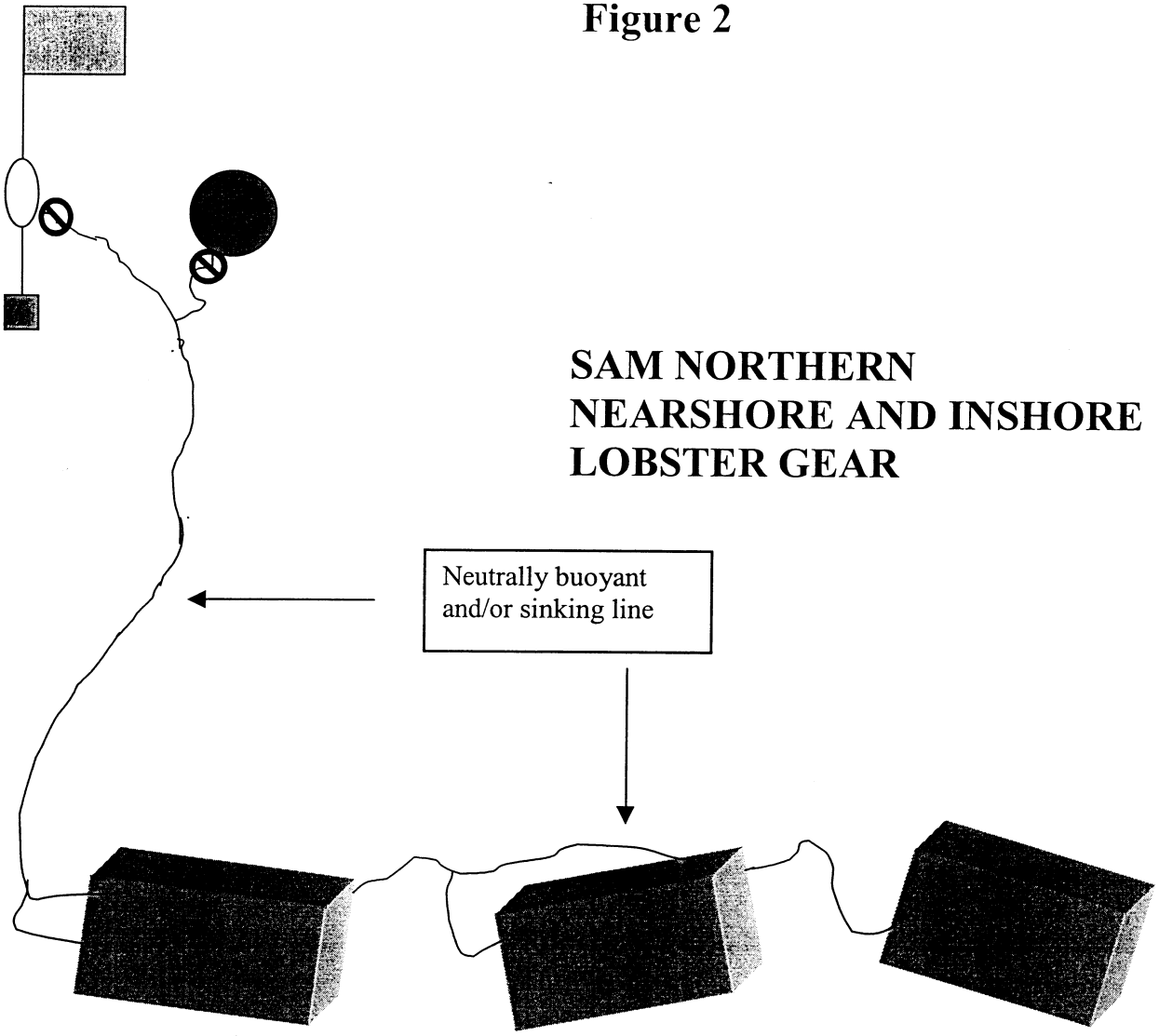
Corrections to the Preamble of the Interim Final Rule

In rule FR Doc. 02–274, published January 9, 2002 (67 FR 1142), make the following corrections:

1. On pages 1146 and 1147, Figures 2 and 3 are corrected to read as follows:

BILLING CODE 3510–22–S

Figure 2



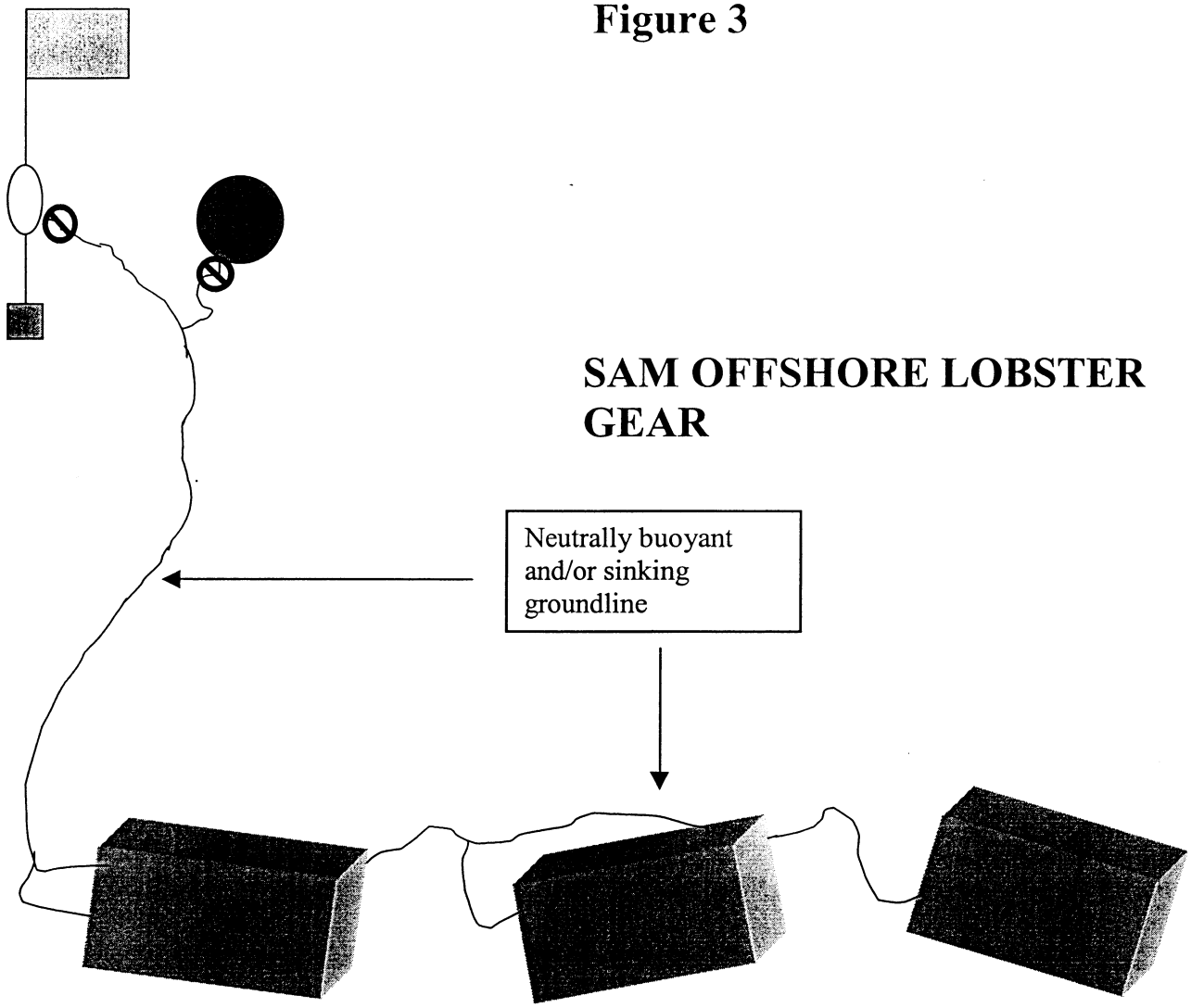
Key:

600 lb required weak link

Buoy

High Flyer or Buoy

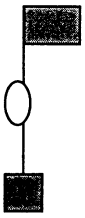
Figure 3



Key:

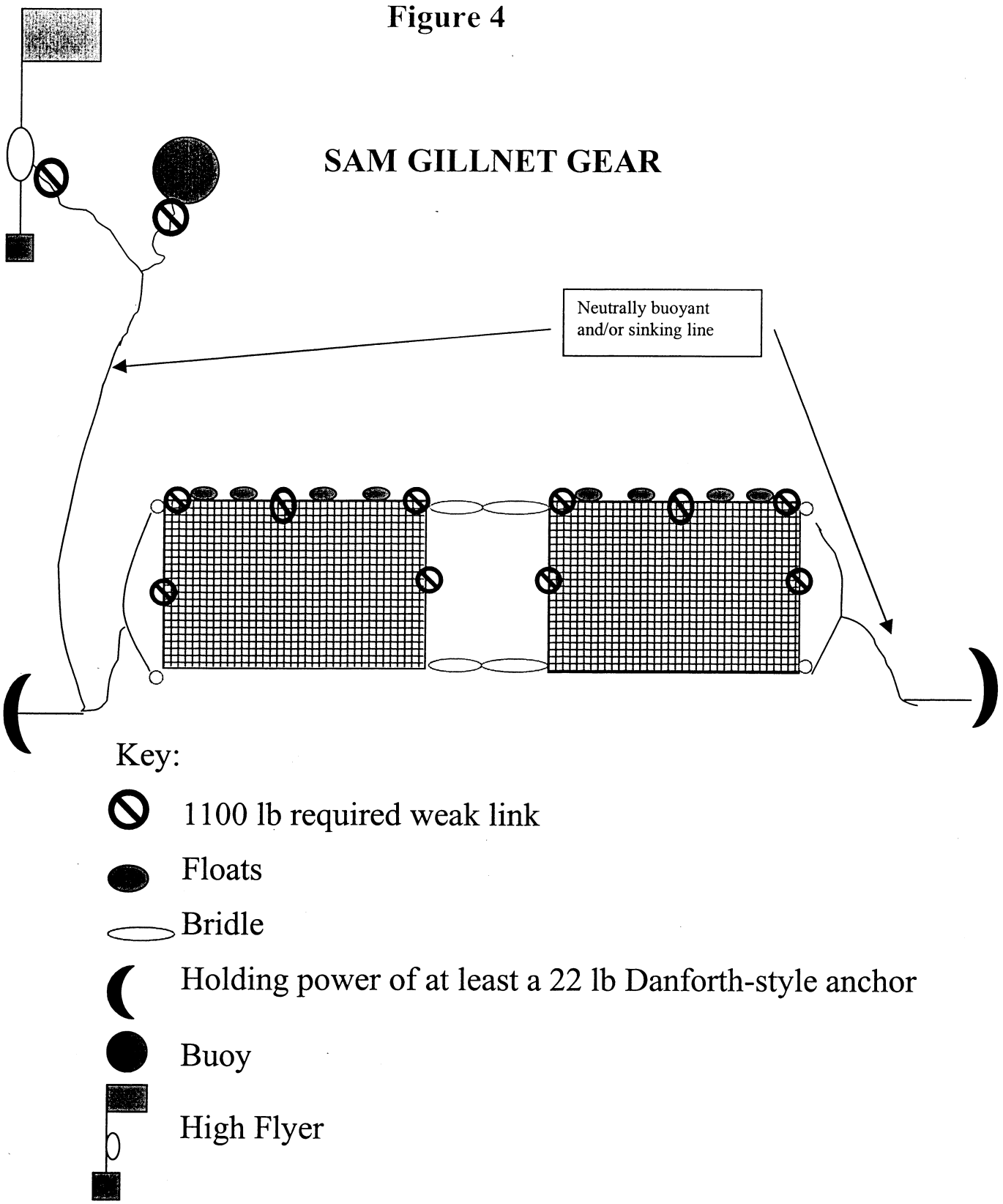
1500 lb required weak link

Buoy


High Flyer

2. On page 1149, Figure 4 is corrected to read as follows:

Figure 4



BILLING CODE 3510–22–C

List of Subjects in 50 CFR Part 229

Fisheries, Marine mammals.

For the reasons set out in the preamble, 50 CFR part 229 is corrected by making the following correcting amendments:

PART 229–AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

§ 229.32 [Corrected]

2. Corrected § 229.32 as follows:

a. Paragraph (g)(3)(iii) introductory text is corrected by removing the word ''either'' in the last sentence;

b. Paragraph (g)(3)(iii)(A) is corrected by removing the word ''or'' at the end of the text;

c. Paragraph (g)(3)(iii)(B) is corrected by adding ''and/or'' at the end of the text;

d. Paragraph (g)(3)(iii)(C) is correctly designated as (g)(3)(iii)(D); and

e. A new paragraph (g)(3)(iii)(C) is added and paragraphs (g)(4) introductory text, (g)(4)(i)(B) and (g)(4)(ii) are correctly revised to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(g)* * *

(3)* * *

(iii)* * *

(C) Issue an alert to fishermen using appropriate media to inform them of the fact that right whale density in a certain area has triggered a DAM zone. In the alert, NMFS will provide detailed information on the location of the DAM zone and the number of animals sighted within it. Furthermore, NMFS will request that fishermen voluntarily remove lobster trap and anchored gillnet gear from the DAM zone and ask that no additional gear be set inside it for 15 days or until NMFS rescinds the alert.

* * * * *

(4) *Seasonal Area Management (SAM) Program.* In addition to existing requirements for vessels deploying anchored gillnet or lobster trap gear in the Other Northeast Gillnet Waters, Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, and Offshore Lobster Waters found at § 229.32 (b) – (d), a vessel may fish in the SAM Areas as described in paragraphs (g)(4)(i)(A) and (g)(4)(ii)(A) of this section, which overlay the previously mentioned areas, provided the vessel complies with the gear requirements specified in paragraphs (g)(4)(i)(B) and (g)(4)(ii)(B) of this section during the times specified in those paragraphs. The gear requirements in (g)(4)(i)(B) and (g)(4)(ii)(B) supercede requirements found at § 229.32 (b) - (d) when the former are more restrictive than the latter. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(i)* * *

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator for Fisheries, NMFS, in accordance with paragraph (g)(2) of this section, from March 1 through April 30, no person may fish with anchored gillnet or lobster trap gear in SAM West unless that person's gear complies with the following gear characteristics:

(*1*)*Anchored gillnet gear.* (*i*) Ground lines and Buoy lines—All ground lines and buoy lines must be made entirely of sinking or neutrally buoyant line. Floating ground lines and buoy lines are prohibited.

(*ii*) Buoy weak links—All buoy lines are attached to the buoy with a weak link having a maximum breaking strength of up to 1,100 lb (498.9 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(*iii*) Net panel weak link—Each net panel must have a total of five weak links. The breaking strength of each of these weak links must not exceed 1,100 lb (498.9 kg). The weak link requirements apply to all variations in panel size. Three of the five weak links must be located on the floatline. One floatline weak link must be placed at the center of the net panel, and two weak links must be placed as close as possible to each of the bridle ends of the net panel. The remaining two of the five weak links must be placed in the center of each of the up and down lines at either end of each panel.

(*iv*) Buoy line—No more than one buoy line per net string may be used, and it must be deployed at the northern or western end of the gillnet string depending on the direction of the set.

(*v*) Gillnet anchor—All anchored gillnets, regardless of the number of net panels, must be securely anchored with a holding power of at least a 22 lb (9.9 kg) Danforth-style anchor at each end of the net string.

(*2*) *Lobster Trap gear.* (*i*) Ground lines and Buoy lines—All ground lines and buoy lines must be made entirely of sinking or neutrally buoyant line. Floating ground lines and buoy lines are prohibited.

(*ii*) [*Reserved*]

(*iii*) Offshore Lobster Waters Area buoy weak links—All buoy lines must be attached to the buoy with a weak link having a maximum breaking strength of up to 1,500 lb (680.4 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(*iv*) Buoy line—No more than one buoy line per trawl is allowed. The buoy line must be attached to the northern or western end of the trawl string depending on the direction of the set. These requirements supersede the requirements found at § 697.21, which require one radar reflector at each end of a trawl with more than three traps.

(ii) SAM East. (A) *Area.* SAM East consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM EAST

Point	N. Lat.	W. Long.
SAM5	41°48.9′	69°24′
SAM4	42°30′	69°24′
SAM8	42°30′	67°26′
SAM9	41°45′	66°50′
SAM10	41°45′	68°17′
SAM11	42°10′	68°31′

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator for Fisheries, NMFS, in accordance with paragraph (g)(2) of this section, from May 1 through July 31, no person may fish with anchored gillnet or lobster trap gear in SAM East unless that person's gear complies with the gear characteristics found at paragraph (g)(4)(i)(B) of this section.

* * * * *

[FR Doc. 02–27363 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 101102G]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 17—Adjustment of the Ceremonial and Subsistence Harvest Regulations for the Ocean Salmon Fisheries of the Quileute Tribe

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS announces that the ceremonial and subsistence (C&S) harvest regulations for the Quileute Tribe were modified to extend the C&S fishery through midnight on Tuesday, October 15, 2002, with a possession and landing limit of 20 salmon per day, and all size restrictions suspended for the duration of the fishery. On September 26, 2002 the Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that the tribal overall quota of 60,000 chinook and 60,000 coho salmon had not been reached, and it was found that there was enough salmon left in the quotas to allow additional days of fishing in the C&S fishery. These actions were necessary to conform to the 2002 management goals.

DATES: Closure of the C&S harvest for the Quileute Tribe effective 2359 hours local time, October 15, 2002, after which the fishery will remain closed until opened through an additional inseason action, which will be published in the **Federal Register** for the west coast salmon fisheries, or until the effective date of the year 2003 management measures. Comments will be accepted through November 15, 2002.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the C&S harvest regulations for the Quileute Tribe to extend the C&S fishery through midnight on Tuesday, October 15, 2002, with a possession and landing limit of 20 salmon per day, and all size restrictions suspended for the duration of the fishery. On September 26, 2002, the Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that the tribal quota of 60,000 chinook and 60,000 coho salmon had not been reached, and it was found that there was enough salmon left in the quotas to allow additional days of fishing in the C&S fishery. Modification of Treaty Indian fishing is authorized by regulations at 50 CFR 660.408(k)(1). Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1), and modification of fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced that all treaty Indian fisheries would open May 1, 2002, through the earlier of June 30, 2002, or a 30,000–chinook quota, and July 1, 2002, through the earliest of September 15, 2002, or a 30,000–chinook or the overall 60,000 coho quota. The minimum size and retention limits for C&S harvest for the Quileute, Hoh, and Quinault tribes were: ''Not more than 2 chinook longer than 24 inches (61.0 cm) in total length may be retained per day. Chinook less than 24 inches (61.0 cm) total length may be retained.''

On September 26, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, the Quileute Tribe, the Washington Department of Fish and Wildlife, the Makah Tribe, the Quinault Tribe, and other interested parties by conference call. Information related to catch to date, the chinook and coho catch rates, and effort data indicated that the chinook and coho quotas had not been reached. As a result, the Quileute Tribe recommended, and the Regional Administrator concurred, that the Quileute Tribe's C&S fishery be modified to extend the C&S fishery through midnight on Tuesday, October 15, 2002, with a possession and landing limit of 20 salmon per day, and all size restrictions suspended for the duration of the fishery. All other restrictions that apply to this fishery remained in effect as announced in the 2002 annual management measures.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the Quileute Tribe. The States and Tribes manage the fisheries in State waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411 (a)(2), actual notice to fishers of the above described actions were given prior to the effective dates by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

These actions do not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay is impracticable and contrary to the public interest. As previously noted, actual notice of these actions were provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment is impracticable because NMFS, the Tribes, and the State agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the limits to which the fishery must be in place. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because it does not allow fishers appropriately controlled access to the available fish at the time they are available.

The AA finds good cause to waive the 30–day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in effectiveness of this action would not

allow fishers appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: October 21, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–27361 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D.101102D]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action No. 15—Closure of the Commercial Fishery from Humbug Mountain, OR to the Oregon-California Border

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

ACTION: Closure; request for comments.

SUMMARY: NMFS announces that the commercial fishery for all salmon except coho in the area from Humbug Mountain, OR to the Oregon-California Border was closed at midnight on September 9, 2002. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that the quota of 2,000 chinook salmon had been reached. This action was necessary to conform to the 2002 management goals.

DATES: Closure in the area from Humbug Mountain to the Oregon-California border, effective 2359 hours local time (l.t.), September 9, 2002, after which the fishery will remain closed until opened through an additional inseason action, which will be published in the **Federal Register** for the west coast salmon fisheries, or until the effective date of the year 2003 management measures. Comments will be accepted through November 15, 2002.

ADDRESSES: Comments on these actions must be mailed or faxed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070, facsimile 206–526–6376; or

Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132, facsimile 562–980–4018.

Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator closed the commercial salmon fishery in the area from Humbug Mountain, OR to the Oregon-California Border effective at midnight on Monday, September 9, 2002. Information provided on September 9, 2002, estimated that the quota of 2,000 chinook salmon had been reached. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced that the commercial fishery for all salmon except coho in the area from Humbug Mountain, OR to the Oregon-California Border would open July 1, 2002, through the earlier of July 30, 2002, or a 1,500–chinook quota. The fishery would then reopen on August 1, 2002, through the earlier of August 29, 2002, or a 3,000–chinook quota; and September 1, 2002, through the earlier of September 30, 2002, or a 2,000–chinook quota. No transfer of remaining quota from earlier fisheries allowed.

Inseason Action #8 announced the commercial fishery for all salmon except coho in the area from Humbug Mountain to the Oregon-California Border was closed at midnight on July 26, 2002 (67 FR 57345, September 10, 2002). It was determined that the quota of 1,500 chinook salmon had been reached.

On September 9, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council and Oregon Department of Fish and Wildlife (ODFW) by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the quota had been reached. As a result, the State of Oregon recommended, and the Regional Administrator concurred, that the commercial salmon fishery in the area from Humbug Mountain, OR to the Oregon-California Border close effective at midnight on Monday, September 9, 2002. All other regulations that apply to this fishery remain in effect as announced in the 2002 annual management measures and subsequent inseason actions.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the ODFW. The States manage the fisheries in State waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411 (a)(2), actual notice to fishers of the above described action was given prior to the effective date by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay is impracticable and contrary to the public interest. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment is impracticable because NMFS and the State agencies have insufficient time to allow for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because not closing the fishery upon attainment of the quota would allow the quota to be exceeded and thus compromise conservation and allocation objectives established preseason, and it does not allow fishers appropriately controlled access to the available fish at the time they are available.

The AA finds good cause to waive the 30–day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in

effectiveness of this action would not allow fishers appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: October 21, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–27359 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 101102C]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 14--Adjustment of the Recreational Fishery from Leadbetter Point, WA to Cape Falcon, OR (Columbia River Area)

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

ACTION: Adjustment; request for comments.

SUMMARY: NMFS announces that the recreational fishery in the area from Leadbetter Point, WA to Cape Falcon, OR (Columbia River Area), was modified to close at midnight on Monday, September 2, 2002, and then reopen Friday, September 6, 2002, through midnight on Sunday, September 15, 2002. On August 29, 2002, the Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that the quota of 55,700 coho salmon would be reached by September 2, 2002. However, after reevaluating the available catch and effort data on September 4, 2002, it was found that there was enough salmon left in the coho quota to allow an additional 10 days of fishing if coho were transferred from Westport sub-area quota. These actions were necessary to conform to the 2002 management goals.

DATES: Closure in the Columbia River Area effective 2359 hours local time (l.t.), September 2, 2002; Reopening in the Columbia River Area effective 0001 hours l.t., September 6, 2002 through 2359 hours l.t., September 15, 2002, after which the fishery will remain closed until opened through an additional inseason action, which will be published in the **Federal Register** for the west coast salmon fisheries, or until the effective date of the year 2003 management measures. Comments will be accepted through November 15, 2002.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the season for the recreational fishery in the Columbia River sub-area to close at midnight on Monday, September 2, 2002, and then reopen Friday, September 6, 2002, through midnight on Sunday, September 15, 2002. On August 29, 2002 the Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that the quota of 55,700 coho salmon would be reached by September 2, 2002. However, after reevaluating the available catch and effort data on September 4, 2002, it was found that there was enough salmon left in the coho quota to allow an additional 10 days of fishing if the remaining coho were transferred from the Westport sub-area quota. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1), and modification of fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced the recreational fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, would have an overall chinook quota of 67,500 fish, with each of its four sub-areas having a chinook guideline. The Columbia River sub-area was announced to open July 7, 2002, through the earlier of September 30 or a 55,700 coho subarea quota, with a guideline of 11,200 chinook. The Westport sub-area was announced to open June 30, 2002, through the earlier of September 8, 2002, or a 39,280 coho subarea quota, with a guideline of 32,000 chinook.

The Columbia River sub-area fishery was modified twice by inseason action. The fishery was first modified to establish chinook minimum size limits of 28 inches (71.1 cm) total length from the U.S.-Canada Border to Leadbetter Point, WA, and 26 inches (66.0 cm) total length from Leadbetter Point, WA to Cape Falcon, OR effective July 21, 2002 (67 FR 52891, August 14, 2002). Information provided on July 18, 2002, regarding the available catch and effort data indicated that modifying the minimum size limit of 24 inches (61.0 cm) total length for chinook to the adjusted size limits should be implemented to slow the catch of chinook and provide greater access to the coho quota. Second, the season for the recreational fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, was modified to prohibit chinook retention effective Saturday, August 10, 2002, in the Neah Bay, La Push, and Columbia River sub-areas (see 67 FR 61041, August 27, 2002). The three sub-areas would then remain open through the earlier of their established season end dates or the attainment of their respective marked coho subarea quotas.

The recreational fishery in the Westport, WA sub-area was modified three times by inseason action. The last action modified the Westport sub-area to reopen on Sunday, August 18, 2002, through midnight on Monday, August 19, 2002, to access the available chinook and marked coho left in the sub-area quotas (67 FR 63055, October 10, 2002). The sub-area closed for the 2002 season because there were no chinook remaining in the guideline. However, there were approximately 20,000 marked coho left in the Westport sub-area quota when the sub-area closed.

On August 29, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council (Council), Washington Department of Fish and Wildlife(WDFW), and Oregon Department of Fish and Wildlife (ODFW) by conference call. Information related to catch to date, the chinook and coho catch rates, and effort data indicated that it was likely that the coho quota would be reached by Monday, September 2, 2002. As a result, the States of Washington and Oregon recommended, and the Regional Administrator concurred, that the

Columbia River sub-area close effective at midnight on Monday, September 2, 2002. All other restrictions that apply to this fishery remained in effect as announced in the 2002 annual management measures. In addition, the parties agreed to reevaluate the fishery on September 4, 2002, to assess the possibility of further openers.

On September 4, 2002, the Regional Administrator again consulted with representatives of the Council, WDFW and ODFW by conference call. Information related to catch to date, the chinook and coho catch rates, and effort data indicated that there was enough coho left in the Columbia River sub-area quota, added with the available coho remaining from the Westport sub-area quota, to allow 10 more days of fishing. In addition, enough chinook remained in the quota to account for anticipated hooking mortality that would occur during the fishery. As a result, the States of Washington and Oregon recommended, and the Regional Administrator concurred, that the recreational fishery in the Columbia River sub-area should be modified to reopen on Friday, September 6, 2002, through midnight on Sunday, September 15, 2002, to access the available marked coho left in the modified sub-area quota. All other restrictions that applied to this fishery, including the chinook non-retention requirement, remained in effect as announced in the 2002 annual management measures and subsequent inseason actions.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the States. The States manage the fisheries in State waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411 (1)(2), actual notice to fishers of the above described actions were given prior to the effective dates by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

These actions do not apply to other fisheries that may be operating in other areas.Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay is impracticable and contrary to the public interest. As previously noted, actual notice of these actions were provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment is impracticable because NMFS and the State agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the limits to which the fishery must be adjusted. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because it does not allow fishers appropriately controlled access to the available fish at the time they are available.

The AA finds good cause to waive the 30–day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in effectiveness of this action would not allow fishers appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: October 21, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–27362 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 208
Monday, October 28, 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

Federal Crop Insurance Corporation

7 CFR Parts 400, 407 and 457

RIN 0563–AB85

General Administrative Regulations, Subpart T—Federal Crop Insurance Reform, Insurance Implementation, Regulations for the 1999 and Subsequent Reinsurance Years; Group Risk Plan of Insurance Regulations for the 2001 and Succeeding Crop Years; and the Common Crop Insurance Regulations, Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: The Federal Crop Insurance Corporation is reopening and extending the comment period for the proposed rule that was published in the **Federal Register** on Wednesday, September 18, 2002 (67 FR 58912–58933) that amended the General Administrative Regulations, Subpart T; Group Risk Plan of Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions. The proposed rule implements certain provisions of the Agricultural Risk Protection Act of 2000 (ARPA) eliminating identified program vulnerabilities that have lead to potential fraud, waste, and abuse, and make such other changes to existing policy provisions to better meet the needs of producers. This action will allow interested persons additional time to prepare and submit comments.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business November 12, 2002, and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676. Comments titled ''Basic Provisions'' may also be sent via the Internet to *DirectorPDD@rm.fcic.usda.gov.* A copy of each comment will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CDT, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Janice Nuckolls, Insurance Management Specialist, Research and Development, Product Development Division, Risk Management Agency, at the Kansas City, MO address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

On Wednesday, September 18, 2002, FCIC published a proposed rule with request for comments in the **Federal Register** proposing changes to subpart T in the General Administrative Regulations, the Group Risk Plan of Insurance Regulations, and the Common Crop Insurance Regulations; Basic Provisions to implement program changes mandated by ARPA, and make other changes to existing policy provisions to better meet the needs of the insured.

Comments were required to be received on or before October 18, 2002. Based on requests received during the comment period, we are reopening and extending the comment period until November 12, 2002. This action will allow interested persons additional time to prepare and submit comments.

Signed in Washington, DC, on October 23, 2002.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 02–27367 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02–993–3 PR]

Dried Prunes Produced in California; Revising the Regulations Pertaining to a Voluntary Prune Plum Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revising the administrative rules and regulations pertaining to a voluntary prune plum diversion program under the California prune marketing order (order). The order regulates the handling of dried prunes produced in California and is administered by the Prune Marketing Committee (Committee). The proposed changes would revise the regulations to reflect changes in industry structure and current economic conditions, and would modify administrative procedures used in connection with implementing a diversion program. These changes would provide for more timely and efficient implementation of a diversion program if recommended in the future.

DATES: Comments must be received by December 27, 2002. Pursuant to the Paperwork Reduction Act, comments on information collection burden that would result from this proposal must be received by December 27, 2002.

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

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field

Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revising the administrative rules and regulations pertaining to a voluntary prune plum diversion program under the California prune marketing order (order). The order regulates the handling of dried prunes produced in California and is administered by the Prune Marketing Committee (Committee). The proposed changes would revise the regulations to reflect changes in industry structure and current economic conditions, and would modify administrative procedures used in connection with implementing a diversion program. These changes also would provide for more timely and efficient implementation if a diversion program is needed in the future. The proposed changes were unanimously recommended by the Committee at a meeting on November 29, 2001.

Volume Regulation Authority

Section 993.54 of the order provides authority for volume control in the form of reserve pooling. Volume control regulation is designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California prune crop may be sold by handlers to any market (salable or free tonnage) while the remaining percentage must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Reserve prunes are disposed of through various programs authorized under the order. Net proceeds generated from sales of reserve prunes are distributed to the reserve pool's equity holders, primarily producers.

Diversion Program Authority

The order also provides authority under § 993.62 for prune producers to participate in a voluntary prune plum diversion program when a reserve pool is implemented. Under this program, prune producers can elect to divert part of their prune plum crop from normal prune or prune product markets in lieu of placing prunes in a reserve pool. Section 993.62 also authorizes establishment of rules and regulations to implement and administer a diversion program.

Section 993.162 contains the rules and regulations necessary for governing the implementation of a diversion program.

Prune Marketing Committee Recommendations

Because a diversion program has not been implemented since the 1970's, the administrative rules and regulations contain several outdated provisions. Section 993.162(a) of the regulations currently establishes specific dryaway ratios by producing regions within the production area. Dryaway ratios represent the ratio of the weight of fresh prune plums needed to produce dried prunes, and are the basis for computing the dried weight equivalent of diverted fresh prune plums. The ratios range from 2.6 to 3.25 pounds of fresh plums to make a pound of French prunes, depending on the producing region. For non-French prunes, the dryaway ratio is established at 3.5 pounds of plums for one pound of non-French prunes for the entire production area.

The dryaway ratios can change from year to year depending upon weather conditions, fruit maturity at time of harvest, fruit solids and other factors. The dryaway ratios used in the early 1970's are no longer valid. Expanding production together with limited dehydration capacity has forced some growers to begin harvesting earlier and continue later than in the past. This has resulted in dryaway ratios higher than those currently specified. Because of this, and to provide more flexibility, the Committee recommended removing the specific dryaway ratios for non-French prunes from § 993.162(a) of the regulations and proposed adding language that would allow the Committee to compute dryaway ratios for the applicable producing regions based on a survey of at least eight commercial prune dehydrators geographically dispersed within the production area.

When the Committee believes a diversion program is needed, the Committee would obtain annual average dryaway ratios from commercial dehydrators surveyed and compute a five-year average dryaway ratio for each dehydrator. The Committee would then add together the participating commercial dehydrators' five-year average dryaway ratios for each producing region within the production area, and divide the total dryaway ratio by the number of participating commercial dehydrators to obtain each year's average dryaway ratio by producing region. In the event any of the annual dryaway ratios for any of the crop years are abnormally high or low in any year, the Committee could replace the abnormal year's data with that of an earlier year. After the computations are made, the resulting ratios would be announced and commercial dehydrators would be notified by letter prior to the beginning of any crop year in which reserve pooling and a diversion program was being contemplated. This would result

in more accurate dryaway ratios in determining the dried weight equivalent of fresh prune plums being diverted.

No change to the dryaway ratio for non-French prunes was recommended. Production of these prunes is small (0.06 percent of total prune production), little data is available, and it is believed that the currently listed ratio of 3.5 to 1 is accurate.

As previously mentioned, dryaway ratios for French prunes are calculated and applied to various producing regions within the production area. Section 993.162(a) of the regulations currently contains reference to 13 counties that no longer produce prunes. Prune production has shifted within the production area over the years. Thus, the Committee recommended updating the prune producing regions and condensing them into fewer regions. It is proposed that the regions used in determining dried weight equivalents for a diversion program in § 993.162(a) be realigned as follows:

French Prunes

- North Sacramento Valley—The counties of Butte, Glenn, Shasta, and Tehama.
- South Sacramento, Napa, Sonoma, and Santa Clara Valleys and the counties of Amador, Colusa, Lake, Placer, Solano, Sutter, Yolo, Yuba, Napa, Sonoma, San Benito, and Santa Clara.
- San Joaquin Valley—The counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare.

This proposal also would allow the Committee to assign any new counties of production to one of these three regions or remove counties when production ceased. When prune acreage ceases to exist in a county, the Committee would remove that county from the existing production region, with the approval of the Secretary, and announce the removal to the industry. In like manner, if there were new producing counties within the State, the Committee would, with the approval of the Secretary, be allowed to assign them to one of the existing regions based on geographic proximity and/or production/dehydration characteristics, instead of listing the counties in the rules and regulations. These assignments also would be announced to the industry. This process would allow the Committee to make timely changes to the producing regions so they reflect the current industry situation. Section 993.162(a) is proposed to be modified to reflect these changes.

The region for non-French prunes would continue to include all counties within the production area because specific information on growing regions within the State is not maintained.

Section 993.162(b) of the regulations currently establishes the following eligible diversion methods: (1) Disposing of harvested prune plums under Committee supervision for nonhuman use at a location and in a manner satisfactory to the Committee; and (2) Leaving unharvested the entire production of prune plums from a solid block of bearing trees designated by the producer applying for the diversion. This proposal would specifically reference the removal of prune plum trees prior to harvest as an eligible diversion method. In the past, it has been determined that removing trees would qualify as unharvested production under the existing regulations. However, the Committee recommended adding clarifying language to the regulations to ensure that the removal of trees would qualify as an eligible diversion method.

A final change to § 993.162(b) would require the Committee to conduct a meeting prior to the beginning of any crop year in which a diversion program was being contemplated to determine which diversion method or methods may be used, and announce the eligible diversion method(s) to the industry. Section 993.162(b) is proposed to be modified to reflect these changes.

To participate in the diversion program, producers must file an application with the Committee. Section 993.162(c) of the regulations currently requires that when a producer applies for the diversion program, a deposit fee shall accompany the application. The deposit fees established in the current regulations are as follows: For each producer application, the fee shall be the greater of either $100 or the amount obtained by multiplying the quantity, in tons, of prune plums proposed to be diverted by $3.50. For commercial dehydrators acting as an agent for a group of four or more producers, the fee shall be the greater of either $200 or the amount obtained by multiplying the aggregate quantity in tons of prune plums proposed to be diverted by the group by $3.50. The deposit fees charged to diverting growers were intended to finance the Committee's administrative costs for the entire diversion program with any excess monies to be refunded on a prorate basis to participants. Because of changed economics since these fees were established in the 1970's, the deposit fees established in the regulations would not currently cover these costs. The Committee, therefore, recommended revising the regulations to provide that whenever a diversion program is implemented, the Committee shall, with the approval of the Secretary, compute and announce the deposit fees associated with filing applications for the diversion program. The deposit fees would be announced to the industry, instead of specifying the deposit fees in the rules and regulations. It is intended that the computed fees would reflect Committee administrative costs associated with administering a diversion program whenever such a program is recommended.

These changes would allow flexibility in the regulations by allowing the Committee to compute and announce the fees. Section 993.162(c) is proposed to be modified to reflect these changes.

The Committee also recommended changes to § 993.162(d) of the regulations. This section includes criteria for approving diversion applications and establishes fees in connection with modifying applications. The proposed changes would remove reference to specific fees and allow the Committee to apply fees consistent with the proposed process regarding deposit fees. The changes also would increase the service charge for modifying applications from $1 to $2 per ton to reflect current administrative costs. Section 993.162(d) is proposed to be modified accordingly. The rules and regulations pertaining to implementing a prune diversion program were developed in the 1970's, and several provisions are outdated. These proposed changes are designed to bring the rules and regulations in line with the present California prune industry practice. The changes also provide for flexibility in years when reserve pooling and a diversion program are implemented.

Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 24

handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 9 out of 24 handlers (37.5 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5 percent) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual receipts over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities. USDA does not have precise numbers on the total number of commercial dehydrators in the industry or their size. However, it may be assumed that many may be considered small under SBA criteria.

Under § 993.62 of the order, when volume control in the form of a reserve pool is implemented, prune producers can elect to divert part of their prune plum crop from normal markets in lieu of placing prunes in a reserve pool. Section 993.163 contains the administrative rules and regulations necessary to administer a diversion program. This proposed rule would revise those regulations.

One of the proposed changes would remove references in the regulations to establish dryaway ratios for prune plums of the French variety. Dryaway ratios are used to determine the dried weight equivalent of fresh prune plums diverted from normal markets. Because these dryaway ratios are outdated, the Committee recommended replacing them by a process that would allow the Committee to compute and announce current dryaway ratios based on a survey of commercial dehydrators. Surveying commercial prune dehydrators would impose a minor information collection burden on such entities. It is estimated that between 8 and 15 commercial dehydrators would be requested to furnish information on their annual average dryaway ratios to the Committee, and that it would take approximately 15 minutes to furnish the information. The total estimated annual burden of collecting this information is estimated to be 225 minutes (3 hours and 45 minutes) for the industry. The additional information collection burden is being submitted to the Office of Management and Budget (OMB) for approval, and is addressed in a later section of this proposed rule.

Another change would update the prune producing regions to which the dryaway ratios for French prunes are applied, and allow the Committee to update the areas based on current production information. Dryaway ratios vary from area to area, and prune production shifts over time. Another change would specify in the regulatory text that tree removal is an acceptable diversion method, and that the Committee may determine, with the approval of the Secretary, and announce which method(s) of diversion may be used whenever a program is implemented. Another change would remove from the regulations outdated deposit fees for diversion program participants and authorize the Committee to compute such fees based on current program administration costs.

The proposed changes to the prune producing regions, addition of acceptable diversion methods, and the Committee's authority to determine which methods of diversion are to be used are not expected to have a significant impact on growers or handlers, either small or large. These changes would update the regulations to reflect changes in the industry and to facilitate administration and implementation of a voluntary diversion program, if recommended in the future.

The proposed changes regarding deposit fees would allow the Committee to collect charges from diversion program participants that reflect actual administrative costs incurred by the Committee. The fees specified in the regulations are outdated and would not cover the Committee's actual costs if a diversion program was needed to be implemented in the future. These changes would help to ensure that the growers participating in a future diversion program would pay the administrative costs of the program, as specified in § 993.62(g) of the order. Because growers participating in a diversion program are the beneficiaries of the program, it is appropriate that they pay the administrative fees of the program. In addition, because the diversion program is voluntary, growers would determine individually whether the costs would outweigh the benefits prior to their participation. It is not known how many growers would participate in a diversion program, since there has not been one implemented under the marketing order since the 1970's.

This proposed rule would be applied to small and large entities equally, regardless of size. It is anticipated that the recommended actions would benefit the prune industry by updating the regulations to reflect changes in the industry, and by providing a process that would facilitate more timely implementation of a diversion program, if recommended.

The Committee discussed alternatives to this change on November 29, 2001, including taking no action. However, that would leave any future diversion program a less viable supply management tool due to outdated program elements. Another alternative was to update the data on dryaway ratios, prune producing regions, and diversion application charges through informal rulemaking the next time a diversion program was considered, rather than changing to a formula or survey procedure as proposed herein. This alternative was not recommended because the Committee believed that this proposal would provide for more flexibility in administering a future diversion program.

This action would allow the Committee to survey commercial prune dehydrators to estimate costs applicable to drying prune plums. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data to administer a future program. This rule would impose some additional reporting or recordkeeping requirements on both small and large California prune plum commercial dehydrators. The information collection requirements are discussed in the following section. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's Supply Management Subcommittee meeting on November 28, 2001, and the Committee meeting on November 29, 2001, where this action was deliberated, were both public meetings widely publicized throughout the prune industry. All interested persons, both large and small, were invited to attend the subcommittee and Committee meetings and participate in the industry's deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/*

fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that AMS is seeking approval for a new information collection request for Dried Prunes Produced in California, Marketing Order No. 993 (order).

Title: Dried Prunes Produced in California, Marketing Order No. 993.

OMB Number: 0581–NEW.

Type of Request: New collection.

Abstract: The information collection requirements in this request are essential to carryout the intent of the Act, to provide the respondents the type of service they request, and to administer the dried prune marketing order program, which has been operating since 1949.

On November 29, 2001, the Prune Marketing Committee unanimously recommended revising the order's administrative rules and regulations pertaining to a voluntary prune plum diversion program. One of the proposed revisions would require the Committee to survey commercial prune dehydrators to determine dried weight equivalents for fresh prune plums to be diverted. The Committee would obtain commercial dehydrators' annual dryaway ratios for the preceding five years, and would compute a five-year average dryaway ratio for each dehydrator. The Committee would then average those ratios and compute a five-year average dryaway ratio for each producing region, and apply that ratio to diverted prune plums in those regions.

The survey is needed so the Committee can compute and announce dried weight equivalents for fresh prune plums for use by those choosing to participate in a voluntary diversion program.

The information collection would be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters staff, and authorized Committee employees. Authorized Committee employees will be the primary users of the information and AMS is the secondary user.

The request for approval of the new information collection under the order is as follows:

Prune Dehydrator Survey

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Commercial prune dehydrators.

Estimated Number of Respondents: 15.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3.75 hours.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the 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.

Comments should reference OMB No. 0581-NEW and the Dried Prune marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

As mentioned before, AMS is seeking approval from OMB for the additional burden imposed by the *Prune Dehydrator Survey.* Upon OMB approval, the additional burden will be merged into the information collection currently approved under OMB No. 0581–0178, Vegetable and Specialty Crop Marketing Orders.

In addition to the information collection burden, this rule also invites comments on revising the regulations concerning a voluntary prune plum diversion program under the order. A 60-day comment period is invited to allow interested persons to respond to this proposal. All written comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 993.162, paragraphs (a), (b), (c), and (d) are revised to read as follows:

§ 993.162 Voluntary prune plum diversion.

(a) *Quantity to be diverted.* The Committee shall indicate the quantity of prune plums that producers may divert pursuant to § 993.62 whenever it recommends to the Secretary that diversion operations for a crop year be permitted. Whenever diversion operation for a crop year have been authorized by the Secretary, the Committee shall notify producers, commercial dehydrators, and handlers, known to it of such authorization and diversion program procedures. The Committee shall compute the dried weight equivalent of prune plums so diverted on a dryaway basis as follows:

(1) For prune plums of the French variety, the Committee shall survey at least eight commercial prune dehydrators that are geographically dispersed within the production area to obtain their annual dryaway ratios for each of the preceding five crop years, and compute a five-year average dryaway ratio for each dehydrator. The Committee shall then add together the participating commercial dehydrators' five-year average dryaway ratios for each producing region within the production area, and divide the total by the number of participating commercial dehydrators in that region to compute the dryaway ratio by producing region. In the event any of the annual dryaway ratios for any of the crop years is abnormally high or low in any year, the Committee may replace the abnormal year's data with that of an earlier year. The prune producing regions for which dryaway ratios shall be computed for prune plums of the French variety are as follows:

(i) North Sacramento Valley, which includes the counties of Butte, Glenn, Shasta, and Tehama;

(ii) South Sacramento, Napa, Sonoma, and Santa Clara Valleys, which includes the counties of Amador, Colusa, Lake, Placer, Solano, Sutter, Yolo, Yuba, Napa, Sonoma, San Benito, and Santa Clara; and

(iii) San Joaquin Valley, which includes the counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare.

(A) *New producing counties within the area.* If there were new producing counties within the State of California,

the Committee would, with the approval of the Secretary, assign the new prune producing county or counties, as the case may be, to one of the prune producing regions based on geographic proximity and/or production/dehydration characteristics. The addition of a county or counties, as the case may be, to one of the producing regions would be announced to the industry.

(B) *Removal of a county from a production area.* When prune acreage ceases to exist in a county, the Committee would, with the approval of the Secretary, remove that county from the existing region. Removal of a county from a production region also would be announced to the industry.

(2) For prune plums of the non-French variety, the dryaway ratio shall be 1 pound for each 3.50 pounds or prune plums diverted. The prune-producing region for prune plums of non-French varieties is the State of California.

(b) *Eligible diversions.* Eligible diversions shall preclude prune plums from becoming prunes and may include the following methods:

(1) Disposing of harvested prune plums under Committee supervision for nonhuman use at a location and in a manner satisfactory to the Committee;

(2) Leaving unharvested the entire production of prune plums from a solid block of bearing trees designated by the producer applying for the diversion or removing prune plum trees prior to harvest; and/or

(3) Such other diversions as may be authorized by the Committee and approved by the Secretary.

(4) In accordance with § 993.62(c), eligible diversion shall not apply to prune plums, which would not, under normal producer practices, be dried and delivered to a handler. On or before July 20 of each crop year when the Committee recommends a reserve pool and diversion program (except the Committee with the approval of the Secretary may extend this date by not more than 10 business days if warranted by a late crop), the Committee shall identify, with the approval of the Secretary, the acceptable method(s) of voluntary prune plum diversion through reasonable publicity to producers, commercial dehydrators, handlers, and the cooperative bargaining association(s). For the purposes of this section, cooperative bargaining association means a nonprofit cooperative association of dried prune producers engaged within the production area in bargaining with handlers as to price and otherwise arranging for the sale of natural condition dried prunes of its members.

(c) *Applications for diversion*—(1) *By producers.* Each producer desiring to divert prune plums of his own production shall, prior to diversion, file with the Committee a certified application on Form PMC 10.1 ''Application for Prune Plum Diversion'' containing at least the following information:

(i) The name and address of the producer; whether the producer is an owner-operator, share-landlord, share-tenant, or cash tenant; and the name and address of any other person or persons sharing a proprietary interest in such prune plums;

(ii) The proposed method of diversion and the location where the diversion is to take place;

(iii) The quantity and variety of prune plums proposed to be diverted; and

(iv) The approximate period of diversion.

(v) A deposit fee shall accompany each producer's application to cover costs associated with processing the application and administering the diversion program. The Committee shall compute, with the approval of the Secretary, and announce to the industry, the deposit fee. The deposit fee announced shall be a set dollar amount or a per ton cost based on the proposed tonnage to be diverted. The fee paid by the applicant shall be the greater of these amounts.

(2) *By dehydrator as agent.* Any producer, or group of producers, may authorize a dehydrator to act as an agent to divert harvested prune plums. Prior to diversion such dehydrator shall submit to the Committee an application on Form PMC 10.1 ''Application for Prune Plum Diversion'' for each producer or group of producers under contract with the dehydrator. A deposit fee shall accompany each such application to cover the costs associated with processing the application and administration of the program. With respect to any group of four or more producers under contract with a dehydrator, the deposit fee for the group shall be the greater of either double the single deposit fee, pursuant to paragraph (c)(1) of this section, or the amount obtained by multiplying the total tonnage of prune plumes to be diverted by the group of producers covered in the dehydrator's application times the per ton deposit rate announced by the Committee pursuant to (c)(1) of this section.

(3) *Receipt of applications.* The Committee shall establish, and give prompt notice to the industry, a final date for receipt of applications for diversion: *Provided*, That the Committee may extend such deadline if the total tonnage represented in all applications is substantially less than the total tonnage established by the Committee pursuant to paragraph (a) of this section.

(d) *Approval of applications.* No certificate of diversion shall be issued by the Committee unless it has approved the application covering such diversion.

(1) The Committee's approval of an application shall be in writing, and include at least the following:

(i) The details as to the method of diversion to be followed;

(ii) The method of appraisal to be used by the Committee to determine the quantity of prune plums diverted;

(iii) The lesser of either the quantity specified in the application to be diverted, or modification of that quantity as a result of any Committee action to prorate the total quantity to be diverted by all producers; and

(iv) Such other information as may be necessary to assist the applicant in meeting the requirements of this section, including the conditions for proof of diversion.

(2) If the Committee determines that it cannot approve an application it shall notify the applicant promptly. The Committee shall state the reason(s) for failing to approve the application, and request the applicant to submit, if practicable, an amended application correcting the deficiencies in the original application.

(3) The Committee shall establish, and give prompt notice to the industry of a final date by which a producer or dehydrator may modify an approved application, including changing the proposed method of diversion or the quantity of prune plums proposed to be diverted: *Provided*, That any such change shall include information on the location or quantity of such diversion and shall be accompanied by a payment of a second deposit fee, calculated pursuant to paragraph (c)(1) or (c)(2), as applicable, of this section, plus a $2 per ton service charge for any increase in tonnage to be diverted.

(4) If an applicant cancels an approved diversion application prior to diversion, no part of the deposit fee shall be refunded, except upon approval by the Committee following review of all circumstances in the matter.

* * * * *

Dated: October 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–27305 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1400

RIN 0560–AG86

Income Limits

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement provisions of the Farm Security and Rural Investment Act of 2002 regarding limits on the income of persons eligible for program participation. These regulations set forth the criteria to be applied in determining whether certain income limits have been exceeded by an individual or entity and thus making such individual or entity ineligible for certain Commodity Credit Corporation (CCC) commodity and conservation program benefits. The proposed rule, generally, provides that for individuals CCC will use the adjusted gross incomes reported by the individual in the prior three years to the Internal Revenue Service (IRS), United States Department of Treasury, and a comparable amount for all other entities such as corporations, limited partnerships, and charitable institutions.

DATES: To be assured of consideration comments must be received by November 27, 2002.

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

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) provides that the regulations needed to implement Title I of the 2002 Act, including those involved here, may be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Because the provisions of the rule are not effective until the 2003 crop, and due to the complexity of the issues presented in the rule, it has been determined that it is in the public's interest to solicit comments on this rule before it becomes effective.

Executive Order 12866

This proposed rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

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

Regulatory Flexibility Act

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

Environmental Assessment

The environmental impacts of this rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An Environmental Evaluation was completed and the proposed action has been determined not to have the potential to significantly impact the quality of the human environment and no environmental assessment or environmental impact statement is necessary. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

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

Executive Order 12372

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

Unfunded Mandates

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

Paperwork Reduction Act

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

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The form that applicants will use to certify their income is being developed for on-line use. However, because of the nature of the other paperwork and documentation that may be needed to verify eligibility based on income, the use of electronic means of submission for those information collections is not feasible at this time.

Background and Discussion

The 2002 Act authorized new programs and benefits, including direct payments and counter-cyclical payments for producers of certain covered commodities and for payments and other benefits under a number of new and revised conservation programs. Section 1603 of that Act amended the Food Security Act of 1985 by adding a new section 1001D to provide that individuals or entities shall not be eligible to receive direct payments, counter-cyclical payments, marketing loan gains nor a payment under any of

the conservation program authorized under title XII of the Food Security Act of 1985 Act, nor a payment under the conservation programs of title II of the 2002 Act, if the three year average of the adjusted gross income of the individual, or comparable measure for an entity, exceeds $2.5 million. An exemption, though, is provided where not less than 75 percent of the adjusted gross income is derived from farming, ranching, or forestry operations. In determining the scope of coverage to an individual or entity, section 1001D(a)(1) provides:

> In this section, the term ''average adjusted gross income'', with respect to an individual or entity (for purposes of this section as defined in section 1001(e)(2)(A)(ii)), means the 3-year average of the adjusted gross income or comparable measure of the individual or entity over the preceding tax years, as determined by the Secretary.

Section 1001 of the 1985 Act sets forth the statutory payment limitations applicable to certain commodity and conservation program benefits. Generally, these provisions have been the same since enactment in 1987, with amendments made since then to include new payments authorized by statutes enacted after 1987, and provide that the total amount of specified payments that a ''person'' may receive are limited to specified amounts per year. Section 1001(e)(2)(A) contains one of the fundamental components of the statutory payment limitation scheme in that it defines the term ''person'' as follows:

> * * * the term ''person'' means—
>
> (i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity (as determined by the Secretary);
>
> (ii) A corporation, joint stock company, association, limited partnership, charitable organization, or other similar entity (as determined by the Secretary, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity (as determined by the Secretary); and
>
> (iii) A State, political subdivision, or agency thereof.

In determining who is a ''person'' for purposes of section 1001D, an ''entity'' is specifically defined to be the same as an ''entity'' as provided in section 1001(e)(2)(A)(ii) of the 1985 Act. Notably, section 1001D does not contain such a mandate to use the definitions in sections 1001(e)(2)(A)(i) and (iii). Accordingly, this proposed rule provides that the definition of an ''entity'' shall be the same for purposes of sections 1001 and 1001D of the 1985 Act. In order to provide consistency in the application of both sections 1001 and 1001D, the proposed rule also provides that the definition of an ''individual'' will be the same for both purposes.

This proposed rule does not propose to extend the adjusted gross income limits to States, counties, political subdivisions, agencies thereof, or recognized Indian tribes because Governmental organizations do not have ''income'' similar to the other listed individuals and entities.

The term ''adjusted gross income,'' for IRS purposes, applies only to taxpayers who are ''individuals.'' Thus, this proposed rule proposes, for individuals, that adjusted gross income be based on the IRS definition of that term and associated filings. Section 1001D(a)(1) takes into account the limited use of this term by providing that the Secretary is to fashion a ''comparable measure'' for other entities. In order to maintain a consistent application of this statutory provision as compared to its application to individuals, this proposed rule proposes that prior years' tax filings will be the starting point of reference. In addition, due to the severe penalties associated with the filing of a false tax return, CCC has determined that such information is likely to be the most credible evidence available to determine this ''comparable measure'' of adjusted gross income. While this proposed rule defines the adjusted gross income for the different program participants, the proposed rule does not specify the line item on tax returns for participants from which the critical information will be gathered since such references may likely change from year-to-year. CCC anticipates that the CCC forms that will be used to make these determinations will specify the specific lines from various IRS forms that will be used. To the extent information from the entity is needed that can not be ascertained solely from the IRS forms, CCC will specify in its forms what other information is needed. Because of the large number of business entities that may be affected by this rule and the desire to rely to the maximum extent possible only on the information already set forth on the IRS forms, CCC specifically requests comments on which IRS forms and lines on the forms that would be rational to use in the application of this rule.

For individuals, the adjusted gross income would be the amount so specified on the individual's final (including amendments) tax return for the applicable year. Where there is a joint return filed, the adjusted gross income specified on the joint return will be used unless a certified public accountant or attorney provides a certified statement delineating the distribution of income and expenses if the two taxpayers would have filed separate returns. Accordingly, it is possible that one tax return will be used by more than one individual for purpose of this rule.

For corporations including a ''sub-chapter S corporation'', the adjusted gross income will be the final taxable income plus charitable contributions. The proposed rule includes charitable contributions in order to provide equitable treatment vis-a-vis individuals. For an individual, charitable deductions are deducted from adjusted gross income, along with a variety of other items, to determine the individual's taxable income. Generally, the other items deducted from an individual's adjusted gross income, such as personal exemptions and child care credits, do not have a corresponding relevancy on a corporate return. Inclusion of charitable contributions by corporations would, in the view of CCC, be more comparable to the actions of an individual.

For charitable organizations with income that is not subject to Federal income taxation, the comparable measure of adjusted gross income is proposed to be ''unrelated business taxable income'' of the entity as reported to the Internal Revenue Service less any other income CCC determines to be from commercial activities. Currently, that amount is specified on line 34 of Internal Revenue Service Form 990–T. Generally, this would exclude from inclusion as adjusted gross income receipts that are gifts, grants and contributions that are tax deductible by the donor; and receipts from rent, royalties and asset sales. Effectively, the adjusted gross income for these entities would be the net income from only their commercial activities.

For a general partnership, foreign partnership, limited liability company, limited partnership, limited liability partnership or similar organization, the adjusted gross income will be the sum of the income from trade or business activities plus the guaranteed payments to the members as reported for the applicable tax year.

For an estate or trust, the adjusted gross income will be the sum of the adjusted total income plus the charitable deductions as reported for the applicable tax year.

Individuals and entities who have adjusted gross income in excess of $2.5 million and whose average adjusted gross income from farming, ranching, and forestry is less than 75 percent of

such income are ineligible for the specified CCC program benefits. The determination of this income from farming, ranching and forestry will be that which is included in the an individual's adjusted gross income. Generally, for farming and ranching incomes, this amount will be from the IRS forms used to determine farm income, currently IRS form 4865 and Schedule F, and would represent the net income from the farming operation after deductions for the cost of production. CCC specifically requests comments on what should be classified as income from farming, ranching and forestry activities. Income derived from forestry operations, to the extent it is not reported on these forms, would be the subject of a separate report by the individual or entity.

With respect to those persons who have exceeded the $2.5 million threshold, Congress intended that those persons who are dependent upon farming, ranching and forestry should be accorded deferential treatment; however, there is no legislative history with respect to the manner in which income derived from specific types of asset sales should be treated. Because of the inherent inability of CCC to try to distinguish the treatment of different types of sales of assets, CCC proposes that:

(1) Income from selling land used to produce forestry or agricultural commodities would not be considered to be derived from framing, ranching or forestry;

(2) Farm or forestry implement sales by a retail dealership would not be considered farm or forestry income but the sale of equipment otherwise subject to depreciation expense on the IRS Form 4865 or Schedule F would be considered to be included as such income;

(3) Investment income of an individual would not be considered income from farming, ranching or forestry even though the invested funds were derived from such sources;

(4) Income from sales at a market would only be considered to be income from farming, ranching and forestry if the commodity being sold was produced by the person;

(5) Income from sales as a commission broker, auctioneer or warehouse operator or similar enterprise would not be income from farming, ranching or forestry; and

(6) In integrated operations, undifferentiated income, for example, income that could not be differentiated between income for the production of the tree and for the sale of a finished product, would not be considered to be derived from farming, ranching and forestry.

Section 1603 also requires a commensurate reduction in the share of payments going to an entity which is proportional to the interest held in the entity by parties whose adjusted gross income is over $2.5 million. Information regarding ownership of interests in entities will be requested to a maximum of five levels of organization. Based upon past experience in administering the provisions of section 1001 relating to the maximum amount of specified payments a person may receive, CCC has determined that business enterprises comprised of such layered ownership generally are done so simply to maximize the receipt of government payments.

The proposed rule also provides that payments, incidental to the actual program payments, made to vendors that receive payment for services or technical assistance that otherwise would be provided to producers and program participants by the government will not be included as payments and benefits subject to this limitation.

Cost/Benefit Analysis

The adjusted gross income limitation not only applies payments under the commodity and price support programs, but to all payments and benefits under the conservation and related programs. Included, but not limited to, are direct and counter-cyclical payments, conservation reserve and environmental quality incentive program payments, loan deficiency payments and marketing loan gains.

For the 2003 through 2007 crop, program or fiscal years, an individual or entity is not eligible for payments or benefits from the above-mentioned programs if their average adjusted gross income exceeds $2.5 million for the 3 tax years immediately preceding the applicable crop, program or fiscal year. This requirement applies unless 75 percent or more of that average adjusted gross income amount was derived from farming, ranching or forestry operations.

The determinations necessary for compliance with the adjusted gross income requirement will be based on Internal Revenue Service concepts and information included on final tax filings. Comparable measures for adjusted gross income have been developed for entities, partnerships and for organizations that do not have such a line item on tax filings, and that are non-profit, or are not required to file tax information.

Under the adjusted gross income provisions, there is a required commensurate reduction of program payments in the situations where an individual or entity fails to comply. Any program payment or benefit issued to an entity, general partnership, or joint venture shall be reduced by an amount commensurate with the direct or indirect interest held by that individual or entity that is determined to have an average adjusted gross income that exceeds the limitation.

Note that those ineligible for marketing loan gains and loan deficiency payments because of the adjusted gross income restriction may still be eligible to participate in the marketing assistance loan programs. Further, when commodity prices decrease they will still be able to use commodity certificates to repay those loans at rate lower that the original loan rates. Benefits they realize from the reduced payment rate, essentially the same as marketing loan gains, are subject neither to payment limits nor the adjusted gross income restrictions.

The 2002 Act mandates that the adjusted gross income requirement apply to the 2003 through 2007 crop years. In May 2002, the Congressional Budget Office estimated that savings from the adjusted gross income requirement will total $22 million in fiscal years 2002 through 2006.

The Cost/Benefit Assessment of the adjusted gross income limitation is available from James Baxa, Production, Emergencies, and Compliance Division, United States Department of Agriculture (USDA), 1400 Independence Ave, SW, Washington, DC 20250. Phone: (202) 720–4189. E-mail: *James Baxa@wdc.usda.gov.*

List of Subjects in 7 CFR Part 1400

Agriculture, Price support programs, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, CCC proposes to amend 7 CFR part 1400 as follows:

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

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

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

2. Section 1400.1 is amended by adding a new paragraph (h) to read as follows:

§ 1400.1 Applicability.

* * * * *

(h) As provided in subpart G of this part, additional requirements are applicable to certain of the payments specified in paragraph (g) of this section.

3. Subpart G is added to read as follows:

Subpart G—Average Adjusted Gross Income Limitation

Sec.
1400.600 Applicability.
1400.601 Determination of average adjusted gross income.
1400.602 Compliance.
1400.603 Commensurate reduction.

Subpart G—Average Adjusted Gross Income Limitation

§ 1400.600 Applicability.

(a) For the 2003 through 2007 crops, programs or fiscal years, an individual or entity is not eligible for any payment or benefit identified in § 1400.1 as being subject to this part if the individual's or entity's average adjusted gross income exceeds $2.5 million for the 3 tax years immediately preceding the applicable crop, program or fiscal year. Payments may also be reduced under the commensurate share rules set out in § 1400.603.

(b) Notwithstanding paragraph (a) of this section, the individual or entity may be considered to meet the requirements of this subpart if not less than 75 percent of the individual's or entity's average adjusted gross income for the 3 tax years immediately proceeding the applicable crop, program or fiscal year, is derived from farming, ranching, and forestry operations.

(c) In addition to payments or benefits identified under § 1400.1, this subpart applies to benefits provided to participants under contracts or agreements entered into during the 2003 through 2007 fiscal years for the following programs:

(1) The program authorized by part 1466 of this chapter or its successor regulations;

(2) The program authorized by part 1467 of this chapter or its successor regulations;

(3) The program authorized by part 636 of this chapter or its successor regulations;

(4) Any other program authorized by Title XII of the Food Security Act of 1985, as amended, or Title II of the Farm Security and Rural Investment Act of 2002.

(d) Determinations made under this subpart with regard to the programs described in paragraph (c) of this section will be based on the year the contract or agreement is approved and that determination will apply for the entire term of the subject agreement or contract.

(e) Vendors that receive payment for technical services or assistance provided in conjunction with programs under Title II of the 2002 Act and Title XII of the 1985 Act, but who are not in the class of persons who are beneficiaries of the program, are not subject to this subpart for services that are of the type that are also performed by the Federal Government.

(f) Payments to a person as an escrow agent or other similar capacity in which the recipient is maintaining temporary custody of the funds for eventual disbursement to eligible program participant are not subject to this part so long as the party ultimately receiving the payment is eligible under this part.

(g) Payments to States, counties, political subdivisions and agencies thereof, and Indian tribes are not subject to this subpart.

§ 1400.601 Determination of average adjusted gross income.

(a) For purposes of this subpart, *income from farming, ranching and forestry* means income derived from producing crops, livestock and unfinished raw forestry products.

(b) For purposes of this subpart, *adjusted gross income* means:

(1) For an individual filing a separate tax return, the amount reported as adjusted gross income on the final federal tax return for the individual for the applicable tax year;

(2) For an individual filing a joint tax return, the amount reported as ''adjusted gross income'' on the final filed federal tax return for the applicable tax year unless a certified statement is provided by a certified public accountant or attorney specifying the manner in which such income would have been determined if the individuals had filed two separate returns and that this calculation is consistent with the information actually supporting the filed joint return;

(3) For a corporation, including a subchapter S corporation, the total final reported ''taxable income'' as reported to the Internal Revenue Service plus the amount of the charitable contributions as reported on the final federal income tax return for the applicable tax year;

(4) For a tax exempt entity, the adjusted gross income is the ''unrelated business taxable income'' of the entity as reported to the Internal Revenue Service, less any other income CCC determines to be from non-commercial activities;

(5) For a limited liability company, limited partnership, limited liability partnership or similar type of organization, the income from trade or business activities plus the amount of guaranteed payments to the members as reported on the federal tax return for the applicable year; and

(6) For an estate or trust, the adjusted total income plus charitable deductions as reported on the federal tax return for the applicable tax year.

(c) For purposes of applying this subpart and calculating the three-year average referenced in § 1400.600, that average shall be for the adjusted gross income for the three tax years immediately preceding the applicable crop, program or fiscal year, as determined by CCC, excluding any year in which the individual or entity did not have income or had adjusted gross income considered to be zero.

§ 1400.602 Compliance.

(a) To comply with the adjusted gross income limitation, an individual or entity shall provide either as required by CCC:

(1) A certification in the manner prescribed by CCC from a certified public accountant or attorney that the individual's or entity's average adjusted gross income of the individual or entity does not exceed this limitation; or

(2) Submission to CCC of the relevant Internal Revenue Service documents and supporting financial data as requested by CCC. Such information may include State income tax returns, financial statements, balance sheets, reports prepared for or provided to another Government agency, information prepared for a private lender, and other credible source of information relating to the amount and source of the person's income.

(b) Audits of certifications of average adjusted gross income may be conducted as necessary to determine compliance with requirements of this part. As a part of this audit income tax forms may be requested and if requested must be supplied. If a person has submitted information to CCC, including a certification from a certified public accountant or attorney, that relied upon information from a form previously filed with the Internal Revenue Service, such person shall provide to CCC a copy of any amended form filed with the Internal Revenue Service within 30 days of the filing.

(c) The program participant shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this part, including all documents referred to in paragraph (a)(2) of this section. Failure to provide necessary and accurate information to verify compliance, or failure to comply with the this subpart's requirements, will result in the determination of ineligibility for all program benefits for the year or years subject to the request.

§ 1400.603 Commensurate reduction.

(a) Any program payment or benefit subject to this part provided to an entity, general partnership or joint venture shall be reduced by an amount commensurate with the direct and indirect ownership interest in the entity, general partnership, or joint venture of each individual or entity determined to have an average adjusted gross income in excess of this limitation under the standards elsewhere provided in this subpart for the direct recipient of such payments.

(b) Ownership interest in an entity shall be reviewed to the fifth level of ownership to determine whether a commensurate reduction is applicable and the extent of such reduction. If an ownership interest is not held by an individual in any of the first five levels of ownership, no payment or benefit shall be made with respect to such interest.

Signed in Washington, DC, on October 21, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–27227 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Nos. EE–RM/TP–02–002; EE–RM/STD–02–330]

Energy Conservation Program for Consumer Products: Test Procedure for Residential Central Air Conditioners and Heat Pumps; Energy Conservation Standards for Small Duct High Velocity Air Conditioners and Heat Pumps

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

ACTION: Notice of public workshop.

SUMMARY: The Department of Energy (DOE or Department) is convening a public workshop to discuss and receive comments on several issues related to test procedures for residential central air conditioners and heat pumps and energy conservation standards for small-duct high-velocity (SDHV) central air conditioners and heat pumps.

DATES: The public workshop will be held on Friday, December 13, 2002, from 9 a.m. to 4 p.m. Comments submitted by electronic mail will be considered timely if they are submitted by 11:59 p.m. (Eastern time) January 8, 2003. Written comments, data and information, and a signed original with an electronic copy on diskette, must be received at the Department of Energy by January 8, 2003.

ADDRESSES: The workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue SW., Washington, DC 20585. (Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. If you are a foreign national and wish to participate in the workshop, please inform DOE of this fact as soon as possible by contacting Ms. Crystal Branson at (202) 586–6448 so that the necessary procedures can be completed.)

On or about November 15, 2002, DOE will place a set of presentations describing the Department's research on these issues and workshop agenda on the DOE Web site at: *http://www.eren.doe.gov/buildings/codes_standards/.* Please submit comments, data and information electronically. These should be sent to the following Internet address: *CAC@ee.doe.gov.* Electronic comments must be submitted as a WordPerfect 5.1/6.1/8 format file and avoid the use of special characters or any form of encryption. Comments in electronic format should also be identified by the docket number EE–RM/STD–02–330 (for SDHV comments), or EE–RM/TP–02–002 (for test procedure comments), and wherever possible carry the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. No telefacsimiles (telefaxes) will be accepted.

Written (paper) comments may be submitted to: Ms. Crystal Branson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Energy Conservation Standards and Test Procedures for Residential Central Air Conditioners and Heat Pumps, Docket Number: EE–RM/TP–02–002 (for test procedure comments); EE–RM/STD–02–330 (for SDHV comments), EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–6448. Please submit one signed copy and a computer diskette or CD (in WordPerfect™ 8 format)—no telefacsimiles.

Copies of the transcript of the public workshop, public comments received, and this notice may be read (or copied) at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9611, e-mail: *michael.raymond@ee.doe.gov,* or Mr. Michael W. Bowers, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8140, e-mail: *Mike.Bowers@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Part B of Title III of the Energy Policy and Conservation Act of 1975 (EPCA or Act), Public Law 94–163, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619; the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12; the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357; and the Energy Policy Act of 1992 (EPACT), Public Law 102–486, created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program include residential central air conditioners and central air conditioning heat pumps. (42 U.S.C. 6295(d)).

The Department has been pursuing a rulemaking activity for the purpose of determining whether amended energy conservation standards for the niche central air conditioning products with small ducts and high velocities are justified. The Department also is developing additional revisions it intends to propose to the test procedures for residential central air conditioners and heat pumps. These revisions concern: (1) Establishing new default values for the cooling mode cyclic degradation coefficients; (2) increasing the minimum static pressure used in testing small duct high velocity systems; (3) testing of two-capacity heat pumps; and (4) acceptable verification units for the alternative rating method.

The workshop announced in today's notice is the next step in the rulemaking process for determining whether to

amend the energy conservation standards for small-duct high-velocity air conditioners and heat pumps. In a notice of final rulemaking published on May 23, 2002 (67 FR 36368), DOE established amended energy conservation standards for all classes of residential central air conditioners and heat pumps except small-duct high-velocity systems. In that final rule, DOE created a separate product class for SDHV systems, but it deferred establishing amended standards pending completion of a new test procedure and the analysis needed to support new standards. The May 23, 2002, final rule defines ''small duct high-velocity system'' to mean a heating and cooling product that contains a blower and indoor coil combination that: (1) Is designed for, and produces, at least 1.2 inches of external static pressure when operated at the certified air volume rate of 220–350 CFM per rated ton of cooling; and (2) when applied in the field, uses high velocity room outlets generally greater than 1000 fpm which have less than 6.0 square inches of free area. (*See* revision to § 430.2 at 67 FR 36406). The workshop announced in today's notice is also being held to consider the additional revisions to DOE's test procedure for central air conditioners and heat pumps mentioned in the preceding paragraph of this notice.

A detailed agenda for this workshop is currently under development and as noted above, will be posted on the Department's Web site on or about November 15, 2002. The agenda items will include issues related to the engineering and life-cycle cost methodology used in the small-duct high-velocity standards rulemaking, and the methodology and data used to derive new default values for the cooling mode cyclic degradation coefficients. For each agenda item, the Department will make a presentation summarizing the current status and will initiate a discussion regarding the accuracy and completeness of data and analysis tools. During these discussions, the Department is particularly interested in receiving comments and views of interested parties and possible approaches to enhance the accuracy of the analysis tools and data. The Department encourages those who wish to participate in the workshop to make presentations that address these issues. If you would like to make a presentation during the workshop, please inform Ms. Branson at least two weeks before the date of the workshop and provide her with a copy of your written presentation material at least one week before the date of the workshop.

The meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by antitrust law. After the meeting and a period for written statements, the Department will begin collecting data and conducting the analyses discussed at the workshop.

If you would like to participate in the workshop, to receive workshop materials, or to be added to the DOE mailing list to receive future notices and information regarding distribution transformers, please contact Ms. Crystal Branson at (202) 586–6448.

Issued in Washington, DC, on October 22, 2002.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 02–27332 Filed 10–25–02; 8:45 am]

BILLING CODE 6450–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB34

Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term ''Commodity Pool Operator''

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend Rule 4.5 by adding an alternative limitation on the non-hedge activities of eligible persons claiming relief under the rule (Proposal). The Commission also is taking a ''no-action'' position to permit the use of this alternative criterion pending final action on an amendment to the rule. The Proposal and the ''no-action'' position would not affect the ability of qualifying entities under Rule 4.5 to engage in unlimited trading for *bona fide* hedging purposes.

DATES: Comments on the proposed rule change must be received by December 12, 2002.

ADDRESSES: Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to *secretary@cftc.gov.* Reference should be made to ''Proposed Amendment to Rule 4.5 for Non-Hedge Activity.''

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, Division of Clearing and Intermediary Oversight, or Ronald Hobson, Industry Economist, Office of the Chief Economist, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418–5441 or (202) 418–5285, respectively; facsimile number: (202) 418–5536, or (202) 418–5660, respectively; and electronic mail: *bgold@cftc.gov* or *rhobson@cftc.gov,* respectively.

SUPPLEMENTARY INFORMATION:

I. Background

The term ''commodity pool operator'' (CPO) is defined in section 1a(5) of the Commodity Exchange Act (Act),[1] to mean:

> [A]ny person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, *except that the term does not include such persons not within the intent of the definition of the term as the Commission may specify by rule, regulation, or order.* [Emphasis added.][2]

In connection with the adoption of the Futures Trading Act of 1982,[3] the Senate Committee on Agriculture, Nutrition, and Forestry (Committee) considered an amendment to the Act that would have exempted certain persons from the CPO definition. In lieu of adopting such an amendment to the CPO definition, the Committee directed the Commission to issue regulations that would have the effect of providing relief from regulation as a CPO for certain otherwise regulated persons with respect to their operation of certain collective investment vehicles that met certain criteria. These criteria specified, among other things, that ''the entity uses commodity futures or options thereon

[1] 7 U.S.C. 1a(5) (2002).

[2] Both the Act and the Commission's rules issued thereunder can be accessed through the Commission's Web site: *www.cftc.gov/cftc/cftclawreg.htm#cea.* Commission rules cited to herein are found at 17 CFR chapter I (2002).

[3] Pub. L. No. 97–444, 96 Stat. 2294 *et seq.* (1983).

solely for hedging purposes'' and that ''initial margin requirements or premiums for * * * futures or options contracts will never be in excess of 5 percent of the entity's assets. * * *''[4] Pursuant to this directive, in 1985 the Commission adopted Rule 4.5.[5]

The purpose of Rule 4.5 is to make available to certain persons (eligible persons) an exclusion from the definition of CPO with respect to their operation of certain entities (qualifying entities) that would otherwise be treated as commodity pools under the Act, but that are already subject to extensive operating requirements of another federal or state regulator. These eligible persons and their qualifying entities include: (1) Investment companies registered as such under the Investment Company Act of 1940; (2) state-regulated insurance companies with respect to their operation of insurance company separate accounts; (3) state- or federally-regulated financial depository institutions with respect to their operation of separate units of investment; and (4) trustees, named fiduciaries, certain designated fiduciaries, and employers of pension plans subject to Title I of the Employee Retirement Income Security Act of 1974 with respect to the operation of such plans.[6] In order to claim exclusion from the CPO definition under Rule 4.5, an eligible person must file a Notice of Eligibility with the National Futures Association (NFA) and the Commission.[7] The Notice must contain specified representations on how the person will operate the qualifying entity. These operating criteria include requirements to: restrict the amount of the entity's commodity interest trading with respect to its non-hedging activity; not market the entity as a pool or otherwise as a vehicle to trade commodity interests; disclose the purpose of and restrictions on the entity's commodity interest trading; and submit to special calls to demonstrate compliance with the foregoing provisions. A supplemental Notice must be filed, as necessary, to render the original Notice ''accurate and complete.''[8]

Based upon its staff's experience in administering Rule 4.5, the Commission has made various revisions to the rule subsequent to its initial adoption. These revisions have expanded the range of persons eligible to claim relief under the rule[9] and the trading strategies that may be engaged in under the rule—*i.e.*, that unlimited hedging but limited non-hedging activities may be engaged in under the rule.[10] Based upon staff's most recent experience with Rule 4.5, the Commission again is proposing revisions to the rule and, in particular, to the operating criteria concerning the amount of a qualifying entity's non-hedging commodity interest trading.

II. The Proposal

A. The Text of the Proposal

Currently, Rule 4.5(c)(2)(i) provides that the Notice of Eligibility must contain a representation that the eligible person must operate the qualifying entity such that the entity:

> Will use commodity futures or commodity option contracts solely for bona fide hedging purposes within the meaning and intent of [Rule] 1.3(z)(1); *Provided, however,* That in addition, with respect to positions in commodity futures or commodity option contracts which do not come within the meaning and intent of [Rule] 1.3(z)(1), a qualifying entity may represent that the aggregate initial margin and premiums required to establish such positions will not exceed five percent of the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; And, *Provided further*, That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in [Rule] 190.01(x) may be excluded in computing such 5 percent.

This limitation on non-hedge activity contained in Rule 4.5 has come to be known as ''the 5 percent test.''

Because futures margins have generally been set at levels near or below 5 percent of contract value, the 5 percent test has permitted the notional value of non-hedging commodity futures and option positions to approximate the liquidation value of an entity's portfolio. Recently, however, eligible persons and qualifying entities have expressed concern to Commission staff over the 5 percent test, because margin levels for certain stock index futures have come to significantly exceed 5 percent of contract value, thereby limiting the use of such contracts in non-hedging strategies to a much greater extent than other types of contracts with lower margins.[11] They also have expressed concern that a similar constraint could arise with respect to security futures products (SFPs), because the required margin for SFPs will be 20 percent of contract value.[12]

In response to these concerns, the Commission is proposing to amend Rule 4.5 by adding as an alternative to the 5 percent test a limitation based on the notional value of non-hedge positions. This amendment would reorganize paragraph (c)(2)(i) of the rule, to: (1) Redesignate the 5 percent test as new paragraph (c)(2)(i)(A); and (2) provide an alternative non-hedge operating criterion in new paragraph (c)(2)(i)(B).

As proposed, this alternative would provide that, with respect to non-hedge commodity interest positions, a qualifying entity may represent that the aggregate notional value of such positions does not exceed the liquidation value of the qualifying entity's portfolio (notional test). This alternative is based upon a proposal recently made to the Commission's Division of Clearing and Intermediary Oversight in connection with a request for ''no-action'' relief from the 5 percent test of Rule 4.5(c)(2).[13] For the purpose of the notional test, ''notional value'' would be calculated for futures by multiplying for each such position the size of the contract, in contract units, by the current market price per unit and for

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[4] S. Rep. No. 384, 97th Cong., 2d Sess. 79–80 (1982).

[5] 50 FR 15868 (Apr. 23, 1985), which contains a full discussion of the history of the directive and the subsequent adoption of Rule 4.5.

[6] Rules 4.5(a) and (b).

[7] Rule 4.5(c).

[8] Rule 4.5(d).

Over the past ten years, eligible persons have filed approximately 15,500 initial and supplemental Notices with the NFA and the Commission, as follows: registered investment companies (filing on a series-by-series basis)—12,000; state-regulated insurance companies—600; state- or federally-regulated financial depository institutions—2,700; and pension plan trustees, fiduciaries and employers—200. However, not all of the qualifying entities named in these Notices may still be in operation as of this date.

Additionally, Rule 4.5 provides that certain pension plans are not commodity pools. Because this exclusion is self-executing, no notice must be filed to claim it. Accordingly, the amendment to Rule 4.5(c) that the Commission is today proposing does not apply to these plans or their operation. *See* Rule 4.5(a)(4)(i)–(iv).

[9] See 58 FR 43791 (Aug. 18, 1993). The Commission also has expanded the class of persons who are ''non-pools'' under Rule 4.5. *See* 65 FR 24127 (Apr. 25, 2000).

[10] *See* 58 FR 6371 (Jan. 28, 1993).

[11] *See, e.g.*, comments received in connection with the Commission's Roundtable on CPO and CTA Issues, held on September 19, 2002. These comments may be accessed at *http://www.cftc.gov/opa/press02/opa4700–02.htm*.

The Commission held the Roundtable as a result of its ''Report on the Study of the Commodity Exchange Act and the Commission's Rules and Orders Governing the Conduct of Registrants Under the Act.'' The Report was mandated by section 125 of the Commodity Futures Modernization Act of 2000 (CFMA), which directed the Commission to conduct a study of those sections of the Act and the Commission's rules applicable to intermediaries. The Report can be accessed through: *www.cftc.gov/files/opa/opaintermediarystudy.pdf*, and section 125 of the CFMA can be accessed through: *www.cftc.gov/files/ogc/ogchr5660.pdf*.

[12] *See* CFTC Rule 41.45(b)(1) and Securities and Exchange Commission Rule 403(b)(1), 67 FR 53146, 53174 and 53179, respectively (Aug. 14, 2002).

[13] *See* Letter of Barclays Global Investors, N.A. dated July 18, 2002, to Jane K. Thorpe, Director of the Division.

options by multiplying for each such position the size of the contract, in contract units, by the strike price per unit.

The following two examples show the different effects of the existing and proposed non-hedging tests using futures contracts based on equity, in one instance, and on debt, in the other instance. In each example, the eligible person desires to establish the maximum number of contracts permissible for the qualifying entity. In both examples, it is assumed that the entity's liquidation value is $10 million, the settlement level of the contract is as of September 25, 2002, and the margin requirement is as of September 26, 2002.

With respect to the S&P 500 Stock Price Index futures contract traded on the Chicago Mercantile Exchange, the number of contracts the person could establish would be:

5% of liquidation value = $500,000 (.05 × $10,000,000)

Initial non-hedge margin for a single S&P contract = $17,813, or almost 9% of contract value

S&P settlement level = 819.29 points

S&P contract value = $204,822.50 (819.29 × $250 per point)

5% Test = 28 contracts ($500,000/$17,813=28.07)

Notional Test = 48 contracts ($10,000,000/$204,822.50=48.8)

Thus, for establishing positions in the S&P 500 Stock Price Index future contract, the notional test would be less restrictive.

With respect to the 10-Year Treasury Note contract traded on the Chicago Board of Trade, the number of contracts that the eligible person could establish would be:

5% of liquidation value = $500,000 (.05 × $10,000,000)

Initial non-hedge margin for a single T-Note contract = $1,755, or less than 2% of contract value

T-Note settlement level = 114,160 points

T-Note contract value = $114,160 (114,160 × 100%)

5% Test = 284 contracts ($500,000/$1,755=284.9)

Notional Test = 87 contracts ($10,000,000/$114,160=87.6)

Thus, for establishing positions in the 10-Year Treasury Note contract, the 5 percent test would be less restrictive.

The following table summarizes this information:

Contract	Liquidation value	5%	Initial margin (as of 9/26/02)	Settlement level (as of 9/25/02)	Multiplier	Contract value	No. Contracts 5% test	Contracts notional test
S&P	$10m	$500,000	$17,813	819.29	$250	$204,822.50	28	48
T-Note	10m	500,000	1,755	114,160.00	100%	114,160.00	284	87

The Proposal (and the ''no-action'' position taken below) would not affect the ability of eligible persons claiming relief under Rule 4.5 to use commodity interests for *bona fide* hedging purposes on an unlimited basis. Rather, it would establish a second, alternative test under which they could use commodity interests for other than *bona fide* hedging purposes. Also, the Proposal (and the ''no-action'' position) would not affect any other provision of Rule 4.5, including the proviso following paragraph (c)(2) of the rule that:

> the making of such representations [as are required in the Notice of Eligibility] shall not be deemed a substitute for compliance with any criteria applicable to commodity futures or commodity options trading established by any regulator to which [an eligible] person or qualifying entity is subject.

B. Request for Comment

The Commission requests comment on the Proposal and on the following issues:

(1) Do the proposed changes adequately address perceived problems with the existing requirements under Rule 4.5?

(2) Is there some other limitation for non-hedge positions that the Commission should adopt in lieu of, or in addition to, the existing and proposed limitations?

(3) Should the Commission impose *any* limitation for non-hedge activity by persons claiming relief under Rule 4.5?

C. ''No-Action'' Position

The Proposal would facilitate the use of the commodity interest markets by persons and entities who, in accordance with Rule 4.5, are ''otherwise regulated'' and it would potentially benefit other market participants through increased liquidity. Accordingly, the Commission has determined that, pending action on the Proposal, it will not commence any enforcement action against an eligible person for failing to register as a CPO in accordance with section 4m(1) of the Act,[14] where the eligible person operates a qualifying entity in accordance with the proposed revisions to Rule 4.5(c)(2).

Neither eligible persons who have claimed relief under Rule 4.5 nor eligible persons who claim such relief in the future need to take any additional action to operate their qualifying entities in accordance with the notional test. Rather, making the representations currently required by the rule in a Notice filed with the NFA and the Commission—including the representation concerning the 5 percent test—is all that is required.

This position will remain in effect until such time as the Commission takes final action on the Proposal. It is, however, subject to the condition that upon adoption of any amendment to Rule 4.5, the eligible person must comply in full with the terms of any amendment as the Commission may adopt or with the existing 5 percent test of Rule 4.5. In the event the Commission adopts an alternative non-hedge operating criterion that varies from the criterion proposed herein, it will provide affected eligible persons and qualifying entities with sufficient time within which to comply with the criterion as adopted.

III. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA),[15] which imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to the Proposal. The Commission believes the proposed amendment of Rule 4.5 does not contain information requirements which necessitate the approval of the Office of Management and Budget, because the purpose of the amendment is to provide an alternative representation that may be made to claim the relief available under the rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[16] requires that agencies, in promulgating rules, consider the impact

[14] 7 U.S.C. 6m(1).

[15] 44 U.S.C. 3501 *et seq.*

[16] 5 U.S.C. 601 *et seq.*

of these rules on small entities. The definitions of small entities that the Commission has established for this purpose do not address the eligible persons and qualifying entities set forth in Rule 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by federal and state authorities other than the Commission. Assuming, arguendo, that such persons and entities would be small entities for purposes of the RFA, the Commission believes that the Proposal would not have a significant economic impact on them because it would relieve a greater number of those persons (and entities) from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA,[17] that the Proposal will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission invites comment from any person who believes that these rules, as proposed, would have a significant economic impact on its operation.

List of Subjects in 17 CFR Part 4

Commodity pool operators, Commodity trading advisors, Commodity futures, Commodity options.

Accordingly, 17 CFR chapter I is proposed to be amended as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

Authority: 7 U.S.C. 1a, 2, 6b, 6c, 6(c), 6*l*, 6m, 6n, 6*o*, 12a, and 23.

Subpart A—General Provisions, Definitions and Exemptions

2. Section 4.5 is proposed to be amended by revising paragraph (c)(2)(i) to read as follows:

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term ''commodity pool operator.''

* * * * *

(c) * * *

(2) * * *

(i) Will use commodity futures or commodity options contracts solely for bona fide hedging purposes within the meaning and intent of § 1.3(z)(1) of this chapter; *Provided, however,* That in addition, with respect to positions in commodity futures or commodity option contracts which do not come within the meaning and intent of § 1.3(z)(1), a qualifying entity may represent that:

(A) The aggregate initial margin and premiums required to establish such positions will not exceed five percent of the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; *Provided further,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) of this chapter may be excluded in computing such five percent; or

(B) The aggregate notional value of such positions does not exceed the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into. For the purpose of this paragraph (c)(2)(i)(B), the term ''notional value'' shall be calculated for each such futures position by multiplying the size of the contract, in contract units, by the current market price per unit and for each such option position by multiplying the size of the contract, in contract units, by the strike price per unit;

* * * * *

Issued in Washington, DC, on October 22, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–27309 Filed 10–25–02; 8:45 am]

BILLING CODE 6351–01–P

[17] 5 U.S.C. 605(b).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles–Long Beach 02–004]

RIN 2115–AA97

Security Zones; San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish moving and fixed security zones around and under all cruise ships located on San Pedro Bay, California, in and near the ports of Los Angeles and Long Beach. These proposed security zones are needed for national security reasons to protect the public and ports from potential terrorist acts. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port Los Angeles-Long Beach.

DATES: Comments and related material must reach the Coast Guard on or before November 22, 2002.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, Waterways Management Division, 1001 S. Seaside Avenue, Building 20, San Pedro, California 90731. The Waterways Management Division maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Division between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Assistant Chief, Waterways Management Division, (310) 732–2020.

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 Los Angeles-Long Beach 02–004), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know 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.

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Division 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

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Magnuson Act (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in Subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a cruise ship would have on the public interest, the Coast Guard proposes to establish security zones around and under cruise ships entering, departing, or moored within the ports of Los Angeles and Long Beach. These security zones will help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against cruise ships. The Coast Guard believes the establishment of security zones is prudent for cruise ships because they carry multiple passengers.

On November 1, 2001, we issued a similar rule under docket COTP Los Angeles-Long Beach 01–011, and published that rule in the **Federal Register** (67 FR 2571, Jan. 18, 2002) under temporary section 165.T11–058 of Title 33 of the Code of Federal Regulations (CFR). Under temporary section 165.T11–058, which expired at 11:59 PDT on May 1, 2002, the Coast Guard established a 100-yard security zone around all cruise ships that entered, were moored in, or departed from the Port of Los Angeles and that were anchored at Catalina Island.

On May 1, 2002, another temporary rule was issued, under docket COTP Los Angeles-Long Beach 02–009, and was published in the **Federal Register** (67 FR 31955, May 13, 2002) under temporary section 165.T11–065 of Title 33 of the CFR. Under temporary section 165.T11–065, which expires at 11:59 p.m. PST on December 1, 2002, the Coast Guard established moving and fixed security zones around cruise ships located on San Pedro Bay, California, near and in the ports of Los Angeles and Long Beach. The Captain of the Port has determined the need for continued security regulations exists.

Accordingly, this rulemaking proposes to make permanent the temporary security zones established on May 1, 2002, in the rule published in the **Federal Register** at 67 FR 31955 on May 13, 2002.

Discussion of Proposed Rule

The Coast Guard proposes to establish moving and fixed security zones around all cruise ships that are anchored, moored, or underway within the Los Angeles and Long Beach, port areas. These proposed security zones will take effect upon the entry of any cruise ship into the waters within three nautical miles outside of the Federal breakwaters encompassing San Pedro Bay and will remain in effect until the cruise ship departs the three nautical mile limit. This proposed rule, for security concerns, prohibits entry of any vessels inside the security zone surrounding a cruise ship. These security zones are within a 100 yard radius around any cruise ship that is anchored at a designated anchorage; within a 100 yard radius around any cruise ship that is moored, or in the process of mooring at any berth within the Los Angeles or Long Beach port areas; and within 200 yards ahead, and 100 yards on each side and astern of a cruise ship that is underway.

These security zones are needed for national security reasons to protect cruise ships, the public, transiting vessels, adjacent waterfront facilities, and the ports from potential subversive acts, accidents, or other events of a similar nature. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port or his designated representative. Vessels already moored or anchored when these security zones take effect are not required to get underway to avoid either the moving or fixed zones unless specifically ordered to do so by the Captain of the Port or his designated representative.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Pursuant to 33 U.S.C. 1232 and 33 CFR part 27, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States; a maximum criminal fine of $10,000; and imprisonment up to 10 years.

The Captain of the Port will enforce these zones and may request the use of resources and personnel of other government agencies to assist in the patrol and enforcement of the regulation. The Captain of the Port retains discretion to initiate Coast Guard civil penalty action against non-complaint parties pursuant to the PWSA, or, refer appropriate cases to the cognizant U.S. Attorney Office for disposition. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 33 U.S.C. 1231.

Regulatory Evaluation

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

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.

The effect of this regulation will not be significant because the zones will encompass only a small portion of the waterway. Furthermore, vessels will be able to pass safely around the zones, and may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The sizes of the zones are the minimum necessary to provide adequate protection for the cruise ships, their crews and passengers, other vessels operating in the vicinity of the cruise ships and their crews, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route to the Ports of Los Angeles and Long Beach and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking a cruise ship in the main ship channels, effectively prohibiting use of the channels. However, the moving security zones will only be effective during cruise ship transits, which will last for approximately 30 minutes. In addition, vessels are able to safely transit around the zones while a vessel is moored or at anchor in the Ports of Los Angeles and Long Beach.

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. We expect this proposed rule may affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in these small portions of the ports of Los Angeles or Long Beach near a cruise ship covered by these security zones. The impact to these entities would not be significant since these zones are proposed to encompass only small portions of the waterway for limited periods of time while the cruise ships are transiting, moored, or in anchorage. Delays, if any, are expected to be less than thirty minutes in duration.

Small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. When a cruise ship is at anchor, vessel traffic will have ample room to maneuver around the security zone. The outbound or inbound transit of a cruise ship will last about 30 minutes. Although this regulation prohibits simultaneous use of portions of the channel, this prohibition is of short duration. While a cruise ship is moored, commercial traffic and small recreational traffic will have an opportunity to coordinate movement through the security zone with the COTP or his or her designated representative.

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 (Pub. L. 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 Lieutenant Junior Grade Rob Griffiths, Assistant Chief, Waterways Management Division, (310) 732–2020.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

2. Add § 165.1154 to read as follows:

§ 165.1154 Security Zones; Cruise Ships, San Pedro Bay, California.

(a) *Definition.* ''Cruise ship'' as used in this section means a passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the Port of Los Angeles or Port of Long Beach.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship that is anchored at a designated anchorage either inside the Federal breakwaters bounding San Pedro Bay or outside at designated anchorages within three nautical miles of the Federal breakwaters;

(2) The shore area and all waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship that is moored, or is in the process of mooring, at any berth within the Los Angeles or Long Beach port areas inside the Federal breakwaters bounding San Pedro Bay; and

(3) All waters, extending from the surface to the sea floor, within 200 yards ahead, and 100 yards on each side and astern of a cruise ship that is underway either on the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 1–800–221–USCG (8724) or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) When a cruise ship approaches within 100 yards of a vessel that is moored, or anchored, the stationary vessel must stay moored or anchored while it remains within the cruise ship's security zone unless it is either ordered by, or given permission from, the COTP Los Angeles-Long Beach to do otherwise.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by the Los Angeles Port Police and the Long Beach Police Department.

Dated: October 4, 2002.

J.M. Holmes,

Captain, Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 02–27375 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–01–48–7174b; A–1–FRL–7376–4]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Prevention of Significant Deterioration (PSD) of Air Quality Permit Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. The revision consists of a new rule, PART Env-A 623, ''Prevention of Significant Deterioration of Air Quality Permitting,'' that adopts into New Hampshire's SIP the federal PSD program provisions. The SIP revision also amends New Hampshire's permit procedural rule, PART Env-A 205, ''Permit Notice and Hearing Procedures: Temporary Permits and Permits to Operate,'' that make the rule consistent with the new state PSD rule. In another document published elsewhere in this issue of the **Federal Register**, EPA is approving the State's SIP submittal as a direct final rulemaking. The action will ensure that New Hampshire and EPA will interpret and enforce the same PSD rules providing regulatory certainty to the state's regulated community. The approval of this revision will make New Hampshire's PSD program consistent with the federal plan requirements for a SIP-approved PSD program.

DATES: Written comments must be received on or before November 27, 2002.

ADDRESSES: Comments may be mailed to Steven A. Rapp, Air Permits, Toxics, and Indoor Programs, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosytem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Brendan McCahill, (617) 918–1652. E-mail at *McCahill.Brendan@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be

addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 3, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02–25858 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket # ID–02–001; FRL–7397–9]

Approval and Promulgation of Air Quality Implementation Plans; State of Idaho; Northern Ada County Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On January 17, 2002, the State of Idaho submitted a request to redesignate the Northern Ada County ''not classified'' carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The State also submitted a CO maintenance plan for Northern Ada County. In this action, EPA is proposing to approve the Northern Ada County CO redesignation request and the maintenance plan. In the Final Rules Section of this **Federal Register**, EPA is approving the State's redesignation request and State Implementation Plan (SIP) revision, involving the maintenance plan, as a direct final rule without prior proposal because the Agency views the redesignation and SIP revision as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by November 27, 2002.

ADDRESSES: Written comments may be mailed to: Steven K. Body, Office of Air Quality, EPA Region 10, 1200 Sixth Ave., Seattle WA 98101.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Ave., Seattle WA 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality, EPA Region 10, 1200 Sixth Ave., Seattle WA 98101. Telephone at (206) 553–0782.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule, of the same title, published in the rules section of this **Federal Register**.

Dated: October 10, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 02–27238 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2390, Docket No. 02–179, RM–10199]

Radio Broadcasting Services; Port St. Joe, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a pending petition for rulemaking to add an FM allotment in Port St. Joe, Florida. The Commission had requested comment on a petition filed by Cecil P. Staton, proposing the allotment of Channel 242A at Port St. Joe, Florida. *Port St. Joe, Florida*, 66 FR 44586, August 24, 2001. The petitioner filed comments in support of the proposal. No other comments were received. On June 16, 2002, petitioner requested that the Commission dismiss the pending petition. This document grants that request, dismissing the petition and terminating the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. The address of counsel for the petitioner is as follows: Timothy K. Brady, P.O. Box 71309, Newnan, GA 30271–1309.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–179, adopted September 18, 2002, and released September 27, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *See* 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26224 Filed 10–25–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2308, Docket No. 01–191, RM–10211]

Radio Broadcasting Services; Clayton, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a pending petition for rulemaking to add an FM allotment in Clayton, Oklahoma.

The Commission had requested comment on a petition filed by Maurice Salsa, proposing the allotment of Channel 232C3 at Clayton, Oklahoma. *Clayton, Oklahoma,* 66 FR 44588, August 24, 2001. The petitioner filed comments in support of the proposal. No other comments were received. On October 17, 2001, petitioner submitted a motion requesting that the Commission dismiss the pending petition. This document grants that motion, dismissing the petition and terminating the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. The address of the petitioner is as follows: Maurice Salsa, 5616 Evergreen Valley Drive, Kingwood, TX 77345.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–191, adopted September 11, 2002, and released September 27, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26223 Filed 10–25–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 02–277; FCC 02–249]

RIN 4207

2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission initiates its third biennial review of its broadcast ownership rules pursuant to section 202 of the Telecommunications Act of 1996. The Commission invites comment on the national television multiple ownership rule, the local television multiple ownership rule, the radio-television cross-ownership rule, and the dual network rule. The first two rules have been reviewed and remanded to the Commission by the U.S. Court of Appeals for the District of Columbia Circuit, and the issues on remand are incorporated into the proceeding. In addition, comments filed in previously opened proceedings on the local radio ownership rule and the newspaper/broadcast cross-ownership rule are incorporated into this proceeding. The Commission's Media Ownership Working Group also separately released a series of studies on the media marketplace, and evidence in those studies, as well as the comments, will be used to support decisions in this proceeding.

DATES: Comments are due on or before December 2, 2002; reply comments are due on or before January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, (202) 418–2380, and Debra Sabourin, (202) 418–2330. Press inquiries should be directed to Michelle Russo at (202) 418–2358 (voice), (202) 418–7365 (TTY) or (888) 835–5322 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Notice of Proposed Rulemaking* (''NPRM'') MB 02–277; FCC 02–249, adopted September 12, 2002 and released September 23, 2002. The complete texts of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com*. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419 comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings* (63 FR 24121, May 1, 1998). This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or via email at *bmillin@fcc.gov*. Parties may submit their comments using the Commission's Electronic Comment Filing System (''ECFS'') or by filing paper copies. Comments may be filed as an electronic file via the Internet at *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 comments 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 comment by Internet e-mail. To obtain 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 e-mail address>.'' A sample form and directions will be sent in reply. Additional information on ECFS is available at *http://www.fcc.gov/e-file/ecfs.html*.

Filings may also 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). 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 appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered

paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Synopsis of the Notice of Proposed Rulemaking

I. Introduction

1. This *NPRM* initiates a comprehensive review of the Commission's media ownership rules. The law governing our media ownership policies and the media market has undergone substantial changes since our ownership rules were adopted. As a result, this proceeding will include a careful analysis of our policy goals and the development and implementation of a regulatory framework that best serves to achieve those goals.

2. The Commission has long regulated media ownership as a means of promoting diversity, competition, and localism in the media without regulating the content of broadcast speech. The Commission has adopted these regulations pursuant to sections 307, 308, 309(a), and 310(d) of the Communications Act, which authorize the Commission to grant and renew broadcast station licenses in the public interest. The existing rules were adopted largely on a rule-by-rule basis and evolved incrementally over the years. During these evolutions, courts generally approved our rules as long as they were rationally related to achieving their stated purpose and our decisions complied with administrative procedure requirements.

3. The Telecommunications Act of 1996 (''the Act''), Public Law No. 104–104, fundamentally changed broadcast ownership law. Section 202(h) of the 1996 Act directs the Commission to re-examine its broadcast ownership rules every two years and repeal or modify any regulation it determines to be no longer in the public interest. Recent court decisions have held that section 202(h) changes the way the Commission must evaluate its broadcast ownership rules. The courts have stated that section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules. The court decisions interpreting section 202(h) require a Commission decision to retain or modify its media ownership regulations, in its biennial review, to be based on a solid factual record and a consistent analytical framework.

4. The regulatory structure best suited to promote the public interest is not static. Thus, the Commission's media ownership rules must be reassessed on an ongoing basis to ensure that they are grounded in the current realities of the media marketplace. It is only through this reevaluation that the Commission can be assured that its media ownership rules actually advance, rather than undermine, our policy goals. In this regard, we recognize that the marketplace has changed dramatically over the last few decades, with both greater competition and diversity, and increasing consolidation.

5. In conducting this reassessment of our broadcast ownership regulatory framework, we must clearly define our objectives as we strive to promote the public interest. The Commission's ownership policies traditionally have focused on advancing three broadly defined goals: (1) Diversity, (2) competition, and (3) localism. This proceeding will review these policy objectives in light of the current media marketplace and determine whether Commission intervention is necessary to achieve these objectives. In addition, we will consider whether there are additional objectives that the Commission should strive to achieve through our media ownership rules. One such goal may be increased innovation of media platforms and services. In defining these objectives, this proceeding will consider whether the Commission should prioritize these policy objectives and, if so, how. By determining the relative weight of each objective, the Commission will be well positioned to address those instances in which there is tension between our policy goals.

6. This *NPRM* initiates review of four ownership rules: the national television multiple ownership rule, § 73.3555(e); the local television multiple ownership rule, § 73.3555(b); the radio-television cross-ownership rule, § 73.3555(c); and the dual network rule, § 73.658(g). The first two rules have been reviewed and remanded to the Commission by the U.S. Court of Appeals for the District of Columbia Circuit. We address the issues on remand in this proceeding. *Fox Television Stations, Inc.* v. *FCC (''Fox Television'')*; *Sinclair Broadcast Group, Inc.* v. *FCC* (''*Sinclair*'').

7. The Commission previously has initiated proceedings on the local radio ownership rule, MM Docket No. 01–317, Definition of Radio Markets, NPRM/FNPRM (66 FR 63986, December 11, 2001), and the newspaper/broadcast cross-ownership rule, Cross-Ownership of Broadcast Stations and Newspapers, MM Docket No. 01–235, Newspaper/Radio Cross-Ownership Waiver Policy, MM Docket No. 96–197, Order and *NPRM* (66 FR 50991, October 5, 2001). The local radio ownership rule sets forth the number of radio stations that an entity may own in a single radio market, § 73.3555(a). The local radio ownership proceeding examines the effects of market consolidation, the proper definition of a radio market, and possible changes to our local radio ownership rules and policies to reflect the current radio marketplace. The newspaper/broadcast cross-ownership rule, which prohibits the common ownership of a daily newspaper and a broadcast station in the same market, § 73.3555(d), is currently under review in the newspaper/broadcast cross-ownership proceeding. Comments filed in those proceedings will be incorporated in this proceeding. We seek additional comment on those rules to the extent necessary to address issues raised for the first time in this *NPRM*. We do not contemplate a change in the broadcast attribution rules, except to the extent that the single majority shareholder exemption is under consideration in the cable proceeding. *Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992; Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996,* CS Docket No. 98–82, *FNPRM* (66 FR 51905, October 11, 2001). We note in this regard that the attribution rules do not themselves prohibit or restrict ownership of interests in any entity, but rather determine what interests are cognizable under those ownership rules. Furthermore, the focus of the biennial review process is whether the ownership rules ''are necessary in the public interest as the result of competition.'' The media attribution limits are set at the level the Commission believes conveys influence over the affairs of the company in which the interest is held. This level is not related to any changes in competitive forces, and hence the limits are not reviewed on a biennial basis.

8. Our local ownership rules, which include the newspaper/broadcast cross-ownership rule, the local TV ownership rule, the radio/TV cross-ownership rule,

and local radio ownership rule, are interrelated. Each is intended to foster competition and diversity in the local media marketplace. As a result, it is appropriate for the Commission to consider these rules collectively, as any change to one rule may affect the need for other rules to be retained, modified, or eliminated. In addition, by evaluating our local ownership rules collectively, we facilitate consistent analysis of policy questions that are common to multiple rules. We are better able to analyze and apply our findings in areas such as these by considering the rules collectively rather than separately. Assessing these rules collectively also avoids the problem in sequential decision making whereby early decisions can inadvertently predetermine—or preclude certain approaches in—later decisions.

II. Legal Framework for Biennial Ownership Review

9. Section 202(h) of the 1996 Act provides: The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest. Section 11 further requires that the Commission ''shall repeal or modify any regulation it determines to be no longer necessary in the public interest.'' 47 U.S.C. 161.

10. The 1996 Act repealed the prohibition on common ownership of cable and telephone systems, overrode the few remaining regulatory limits upon cable/network cross-ownership, eliminated the national and relaxed the local restrictions upon radio ownership, eased the ''dual network'' rule for television, and directed the Commission to eliminate the cap upon the number of television stations any one entity may own and to increase to 35 from 25 the maximum percentage of American households a single TV broadcaster may reach. According to the court in Fox Television, these enactments, together with section 202(h), ''set in motion a process to deregulate the structure of the broadcast and cable television industries'' as both competition and diversity among media voices increase.

11. This is our third biennial review. As a result of the 1998 biennial review proceeding, the first review, the Commission relaxed the dual network rule, eliminated the experimental broadcast station multiple ownership rule, and initiated a proceeding with respect to the newspaper/broadcast cross-ownership rule. The Commission decided to retain the local radio ownership rule, the national TV ownership rule (including the UHF discount), and the cable/broadcast cross-ownership rule. Prior to completing the 1998 biennial review, the Commission had substantially relaxed the local TV ownership and radio/TV cross-ownership rules in the separate local television ownership proceeding, (MM 91–221, Report and Order (''*R&O*''), 64 FR 50651, September 17, 1999). In the 2000 biennial review proceeding, a Commission-wide comprehensive proceeding, the Commission endorsed the results of the 1998 biennial review of its broadcast ownership rules. 1998 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to section 202 of the Telecommunications Act of 1996 (65 FR 43333, July 13, 2000); 2000 Biennial Regulatory Review, CC Docket No. 00–175, Report, 16 FCC Record 1207 (2001).

12. *Court Decisions Reviewing 1998 Biennial Review.* The Commission's decisions in the 1998 Biennial Report relating to the cable/broadcast cross-ownership rule and the national TV ownership rule were challenged in the United States Court of Appeals for the District of Columbia Circuit. In Fox Television, the court vacated the cable/broadcast cross-ownership rule, and remanded the decision to retain the national TV ownership rule, holding that the Commission's decision to retain these rules was arbitrary and capricious and contrary to section 202(h) of the 1996 Act. The court stated that the Commission had ''no valid reason to think the [national TV ownership rule] is necessary to safeguard competition'' or ''to advance diversity'' and had given no reason to depart from the conclusion the Commission had reached in 1984 that the rule was no longer necessary. The court observed that the Commission had provided no analysis of the state of competition in the television industry to justify its decision to retain the national TV ownership rule. In addition, the court faulted the Commission's decision to retain the national TV ownership rule while it observed the effects of changes in the local TV ownership rule. The court concluded that this ''wait-and-see'' approach could not be squared with section 202(h), which ''carries with it a presumption in favor of repeal or modification of ownership rules.''

13. In retaining the national TV ownership rule, the Commission, in part, reasoned that the rule was necessary to strengthen the bargaining power of the network affiliates, thereby promoting localism and diversity. Although the court in Fox Television rejected the networks' argument that this justification was inconsistent with the requirements of section 202(h), the court determined that the Commission's reliance on this justification was invalid because it did not have sufficient record support. In particular, the court held that the Commission had failed to justify its departure from the 1984 Multiple Ownership Order, where the Commission said it ''had no evidence indicating that stations which are not group-owned better respond to community needs, or expend proportionately more of their revenues on local programming.'' Nonetheless, the court held that the Commission could conceivably distinguish—as incorrect or inapplicable because of changed circumstances—its views in the 1984 Multiple Ownership Order. The court also noted that the Commission did advert to possible competitive problems in the national markets for advertising and program production, and that the intervenors, including the National Association of Broadcasters and National Affiliated Stations Alliance, made a plausible argument that the national television ownership rule furthers competition in the national television advertising market.

14. Based on these findings, the court remanded for further consideration the issue of whether to repeal or modify the national TV ownership rule, holding that ''the probability that the Commission will be able to justify retaining the Rule is sufficiently high that vacatur of the Rule is not appropriate.'' The court also held that the Commission's decision to retain the national TV ownership rule did not violate the First Amendment, reaffirming that the review of broadcast regulations under First Amendment jurisprudence is more deferential than review of cable or print media regulations. The court also rejected the networks' claim that section 202(h) does not allow the Commission to regulate broadcast ownership in the interest of diversity alone. The court held that in the context of broadcast regulation, the public interest has historically embraced both diversity and localism, that protecting diversity is a permissible policy for the agency to seek to advance, and that nothing in section 202(h) indicated that Congress had departed from that approach. The court then held that whatever the virtues may be of a free market in television stations, ''Congress may, in the regulation of

broadcasting, constitutionally pursue values other than efficiency—including in particular diversity in programming, for which diversity of ownership is perhaps an aspirational but surely not an irrational proxy.''

15. The court also, in Fox Television, vacated the cable/broadcast cross-ownership rule, finding that the Commission had failed to justify its retention of the rule as necessary to safeguard competition. In the 1998 Biennial Report, the Commission attempted to justify the retention of the rule by arguing that a cable operator that also owns a broadcast station has the incentive to discriminate against other broadcasters by: (1) Offering joint advertising sales and promotions, and (2) not carrying, or carrying on undesirable channels, broadcast signals of competing stations. The court found that the Commission had not shown a substantial enough probability of discrimination to deem reasonable a broad cross-ownership rule, especially in light of: (1) Existing conduct rules, such as must-carry, ensuring access to cable systems, and (2) competition from DBS providers, which would make discrimination against competing broadcasters unprofitable. Further, the court found that the Commission had failed to justify its departure from a 1992 Report and Order in which it had concluded that the rule was not necessary to prevent carriage discrimination. The court also found that the Commission had failed to justify the rule based on its diversity concerns. Based on its assessment that there was little chance that the Commission would be able to justify retaining the cable/broadcast-cross-ownership rule, and that the disruption caused by vacatur would be insubstantial, the court vacated the rule.

16. With respect to the standard of review generally under section 202(h), the court noted, in the context of discussing the cable/broadcast cross-ownership rule, that the Commission had applied too lax a standard and that ''[t]he statute is clear that a regulation should be retained only insofar as it is necessary in, not merely consonant with, the public interest.'' The Commission petitioned for rehearing as to this issue, arguing that the court's interpretation of the statutory language would impose a higher standard in deciding whether to retain a rule than that which applied to the adoption of the rule in the first place. On rehearing, the court deleted the paragraph in its earlier opinion holding the Commission to a higher ''necessary'' standard in biennial review proceedings, finding that the cable/broadcast cross-ownership rule could not pass muster even under the more relaxed ''consonance'' standard and that determining the applicability of a stricter standard of review therefore was not necessary. The court decided to leave ''unresolved precisely what section 202(h) means when it instructs the Commission first to determine whether a rule is 'necessary in the public interest' but then to 'repeal or modify' the rule if it is simply 'no longer in the public interest.' ''

17. In Sinclair Broadcast Group, Inc. v. FCC, the court reviewed the Commission's decision relaxing the local TV ownership rule. That rule allows the combination of two television stations in the same market if: (1) The Grade B contours of the stations do not overlap, or (2) (a) one of the stations is not among the four highest-ranked stations in the market, and (b) at least eight independently owned and operating full power commercial and non-commercial television stations, or ''voices,'' would remain in that market after the combination. Under the rule, voices are defined to include only broadcast television stations in the market. In Sinclair, the court held that the Commission ''adequately explained how the [local TV ownership rule] furthers diversity at the local level and is necessary in the 'public interest' under section 202(h) of the 1996 Act.'' The court also upheld the local TV ownership rule against a First Amendment challenge, applying the ''rational-basis'' standard of review. The court held that there was a rational relationship between the Local TV Ownership Report and Order and our diversity and competition goals. The court noted that choosing the number eight and defining voices ''are quintessentially matters of line drawing invoking the Commission's expertise in projecting market results,'' and did not decide the issue of whether eight is the appropriate numerical limit. The court invalidated, however, the Commission's definition of voices under the rule because it did not adequately explain its decision to include only broadcast television stations as voices. The court pointed out that the definition was inconsistent with the definition of voices for the radio/TV cross-ownership rule, which also considers major newspapers and cable television to be voices. The court observed that ''[o]n remand, the Commission conceivably may determine to adjust not only the definition of 'voices' but also the numerical limit.''

18. We seek comment on the statutory language of section 202(h) of the 1996 Act and the court's interpretations of that language in Fox Television and Sinclair. We specifically invite comment on the standard we should apply in determining whether to modify, repeal, or retain our rules under section 202(h) of the 1996 Act. For example, does the phrase, ''necessary in the public interest,'' mean we must repeal a rule unless we find it to be indispensable? Or does the phrase mean that we can retain a rule if we would be justified under the current circumstances in adopting it in the first instance because the record shows that it serves the public interest? Or is the standard somewhere in between? The Commission argued in its rehearing petition in Fox Television that ''necessary in the public interest,'' when viewed in the context of the rest of the 1934 and 1996 Acts, means ''in the public interest,'' or useful or appropriate. The very next sentence of the statute uses the term ''no longer in the public interest,'' thus appearing to equate a rule's being ''necessary in the public interest'' with its being ''in the public interest.'' The Commission argued that other provisions of the Communications Act contain similar language using the terms, ''necessary,'' ''required,'' and ''necessity,'' but those provisions have been construed to require the Commission to demonstrate that the rules we adopt advance legitimate regulatory objectives, not that they are necessary in the sense of being indispensable. Others might argue, however, that ''necessary in the public interest'' connotes that a rule must be essential or indispensable in order for us to retain it. What light do the statutory context and other case law cast on the meaning of the term? We invite comment on any other factors we should consider with respect to the meaning of the statutory term ''necessary in the public interest'' as it bears on our review of the ownership rules at issue in this proceeding.

19. In both Fox Television and Sinclair, the court, noting that ''section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules,'' faulted the Commission's justification of its rules as lacking supporting factual evidence. Accordingly, with respect to the rules under consideration, we strongly encourage commenters to provide empirical evidence to buttress their assertions. Our Media Ownership Working Group is engaged in a number of studies that are intended to inform the 2002 biennial review. These studies, which will be released separately for comment, concern the following subjects: (1) Inter-media substitutability

among local media outlets from the perspective of local advertisers; (2) the effect of broadcast media concentration on the level of non-advertising content produced and consumed; (3) the status of broadcast television in the multichannel marketplace; (4) a comparison of local news quantity and quality on network-owned stations and network affiliates; (5) past consumer substitution patterns across various media; (6) the effect of common ownership of same-market newspapers and television stations on news coverage; (7) a survey of American consumers regarding outlets used for news and current affairs; (8) an examination of program diversity on prime time network television between 1966 and 2002; (9) a survey of changes in the availability of media outlets over time in ten select cities; and (10) the effect of local radio market concentration on program diversity and advertising prices. Given the importance of this data to the proceeding, and in order to streamline the review process, comments will be due 60 days after Commission release of the studies; reply comments will be due 90 days after release of the studies. We intend to use the evidence collected in the studies, as well as the comments, to guide and support our decisions in this proceeding.

20. *The First Amendment.* Any media ownership rules we ultimately adopt in this proceeding must be consistent not only with the legal standard of section 202(h), but also with the First Amendment rights of the affected media companies and of consumers. The Fox Television and Sinclair cases recently applied the rational-basis standard to broadcast ownership rules. The court held in Fox Television that the Commission's decision to retain the national TV ownership rule did not violate the First Amendment, and it held in Sinclair that the local TV ownership rule complies with the First Amendment. The court reaffirmed in both cases that the rational-basis standard of First Amendment scrutiny is applicable to broadcast television rather than the higher intermediate scrutiny applicable to cable operators or the strict scrutiny applicable to print media. As the court noted in Sinclair, there is no unabridgeable First Amendment right to hold a broadcast license when a would-be broadcaster does not satisfy the public interest by meeting the Commission criteria for licensing, including ownership limitations.

21. In general, ownership limits on cable operators have been subject to the O'Brien, or intermediate scrutiny, test. Under this standard, government regulation of speech will be upheld only if: (1) It furthers an important or substantial governmental interest; (2) the government interest is unrelated to the suppression of free expression; and (3) the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. The Supreme Court has determined that ''promoting the widespread dissemination of information from a multiplicity of sources'' is a government interest that is not only important, but is of the ''highest order'' and is unrelated to the suppression of free speech.

22. Courts have consistently applied the rational-basis test when faced with First Amendment challenges to Commission ownership restrictions on broadcast media. This is true even when the ownership regulation effectively limits what a non-broadcast media firm, such as a newspaper or a cable company, can own. In other words, when the rule prevents a newspaper from owning an in-market radio station, the courts do not apply the strict scrutiny test applicable to newspapers as newspapers, but rather the rational-basis test used for evaluating broadcast regulations. We will explore a variety of options for a new media ownership framework. We seek comment on the standard of review that would apply to these options.

III. The Modern Media Marketplace

23. Section 202(h) requires the Commission to consider whether any of its ownership rules are ''necessary in the public interest as a result of competition.'' As noted, the Fox Television court faulted the Commission for failing to provide any analysis of the state of competition in the television industry to justify its retention of the national TV ownership rule. Therefore, our evaluation of the broadcast ownership rules must take into account the current status of competition in the media marketplace. Throughout this proceeding, we seek comment on how changes and developments in the media marketplace affect our analysis and decision making. For example, in section IV we explore the definition of the product market and seek comment on whether the proliferation of programming outlets and services requires the Commission to redefine the product market to include media other than broadcasting. The data provides a brief overview of the number of outlets and potential competitors in the video, audio, and newspaper industries. We seek comment on the significance of this data to our biennial review of the ownership rules as well as any other competitive data that would be useful to our analysis.

24. *Video.* There are currently over 106 million TV households in the U.S. served by a variety of video outlets. Over-the-air outlets include: 1,331 commercial TV stations (752 UHF, 579 VHF); 381 non-commercial, educational TV stations (254 UHF, 127 VHF); 554 Class A TV stations (451 UHF, 103 VHF); and, over 2,100 other low-power TV stations. Over sixty percent of commercial TV stations are affiliated with one of the top four networks (ABC, CBS, Fox and NBC). Another 19 percent are affiliated with the smaller national networks: United Paramount (UPN), Warner Brothers (WB), and Paxson Network. The remaining commercial stations are affiliated with other smaller networks or are independents.

25. Cable TV is available to the vast majority of TV households in the U.S. There are 69 million households that subscribe to cable. There are over 230 national cable programming networks and more than 50 regional networks. Many cable systems offer access channels for public affairs, educational and governmental (''PEG'') programming and a few offer local cable news, educational and public affairs programming. Direct broadcast satellite (''DBS'') is available nationwide and has over 18 million subscribers. In addition to the national cable programming networks, DBS offers regional sports networks. DBS may also retransmit the signals of local and network affiliate television stations to subscribers in their local markets. DBS is also required to reserve not less than 4 percent of its channel capacity exclusively for noncommercial programming of an educational or informational nature. Other Multi-channel Video Program Distributors (''MVPDs'') include: satellite master antenna systems (SMATV), with 1.5 million subscribers; home satellite dishes, which serve about 1 million homes; and multipoint distribution service (MDS), with about 700,000 subscribers.

26. *Audio.* Over 13,260 radio stations are currently on the air (4,811 AM, 6,147 commercial FM and 2,303 educational FM). The average radio market has 23 commercial stations. Of the 285 Arbitron radio markets, almost one-half of the markets are served by more than 20 stations and 90% of the markets are served by more than 10 stations. In addition to broadcast radio, audio music, talk, and news channels are provided by many cable and DBS operators. Two Digital Audio Radio Service (''DARS'') systems with over 140,000 subscribers offer almost 100 audio channels nationwide using

satellite transmission. Even more audio channels are available through Internet streaming.

27. *Newspapers*. In 2001, there were 1,468 daily newspapers in the U.S. The total circulation for those newspapers was about 56 million. There were also about 7,700 weekly newspapers with a combined circulation of about 71 million. Sunday newspaper circulation collectively reaches over 59 million per week. Many of these newspapers are available over the Internet.

28. *Internet and other media*. Almost 60% of the U.S. population has Internet access at home. Over 40 million residential Web users have accessed streaming video. Also, about 90% of households have at least one VCR and more than one-half of those own at least two VCRs. Over 14 million homes have DVD players. Personal Video Recorders (''PVR'') sales have reached 500,000 since they were introduced two years ago.

IV. Policy Goals

29. Each of the rules under review in this proceeding seeks to further one or more of three important public interest goals—diversity, competition and localism. The Commission long has embraced these values as the foundation of its ownership rules and policies. In this proceeding the Commission seeks to: (1) Define more precisely the Commission's policy goals; (2) determine how to best promote these goals in today's media market consistent with our statutory mandate; (3) establish the best measure for diversity, competition, and localism; and (4) establish a balancing test to prioritize the goals if tension exists between them.

30. The courts have recognized the Commission's legitimate interest in promoting these policy goals through ownership limits. Media ownership may be limited in order to promote the First Amendment interests of consumers of the electronic media and to promote diversity and competition. The Court has upheld the Commission's predominant reliance on the diversity rationale to support its newspaper/broadcast cross-ownership policies. In Sinclair, the Court of Appeals noted that ownership limits encourage diversity in the ownership of broadcast stations, which can in turn encourage a diversity of viewpoints in the material presented over the airwaves. The court added that diversity of ownership as a means to achieving viewpoint diversity has been found to serve a legitimate government interest, and has, in the past, been upheld under rational basis review. The interests that government may promote through content neutral rules also include competition—both the promotion of competition and the prevention of anti-competitive practices and results.

31. Section 202(h) requires the Commission to determine whether its ownership rules remain necessary in the public interest as a result of competition. Therefore, we must first determine whether the marketplace provides a sufficient level of competition to protect and advance our policy goals. If not, we must determine whether the existing rules or revisions to those rules are required to protect and advance diversity, competition, and localism in the media marketplace.

32. The following paragraphs briefly discuss the Commission's policy goals and invite comment on each. We welcome the submission of any relevant empirical studies for quantifying benefits and harms, as well as comments based on well-established economic theory and empirical evidence. In that regard, we are especially interested in receiving comments that provide not only the theoretical justifications for adopting a particular regulatory framework, but also empirical data on the effect that competition and consolidation in the media industry have on our policy goals.

A. Diversity

33. Diversity is one of the guiding principles of the Commission's multiple ownership rules. It advances the values of the First Amendment, which, as the Supreme Court stated, ''rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.'' The Commission has elaborated on the Supreme Court's view, positing that ''the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level.''

34. The Commission has considered four aspects of diversity: viewpoint diversity, outlet diversity, source diversity, and program diversity. Viewpoint diversity ensures that the public has access to ''a wide range of diverse and antagonistic opinions and interpretations.'' It attempts to increase the diversity of viewpoints ultimately received by the public by providing opportunities for varied groups, entities and individuals to participate in the different phases of the broadcast industry. Outlet diversity is the control of media outlets by a variety of independent owners. Source diversity ensures that the public has access to information and programming from multiple content providers, while program diversity refers to a variety of programming formats and content. Each of these components of diversity is described.

35. *Viewpoint Diversity*. Viewpoint diversity has been the touchstone of the Commission's ownership rules and policies. We remain fully committed to preserving citizens' access to a diversity of viewpoints through the media. The Supreme Court has stated that ''it has long been a basic tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.'' The diversity of viewpoints, by promoting an informed citizenry, is essential to a well-functioning democracy. The principal means by which the Commission has fostered diversity of viewpoints is through the imposition of ownership restrictions. In Sinclair, the Court of Appeals noted that ownership limits encourage diversity in the ownership of broadcast stations, which can in turn encourage a diversity of viewpoints in the material presented over the airwaves. The court added that diversity of ownership as a means to achieving viewpoint diversity has been found to serve a legitimate government interest, and has, in the past, been upheld under rational-basis review.

36. *Outlet Diversity*. The control of media outlets by a variety of independent owners is referred to as ''outlet diversity.'' Outlet diversity ensures that the public has access to multiple, independently-owned distribution channels (*e.g.*, radio, broadcast television, and newspapers) from which it can access information and programming. We have long assumed that diffusing ownership of outlets promotes a wide array of viewpoints. Thus outlet diversity was a key mechanism for promoting viewpoint diversity. In attempting to foster viewpoint diversity through structural regulation, our content-neutral method does not seek to evaluate the substance of any station's editorial decisions. Indeed, a major benefit of content-neutral structural regulation is that we avoid making inescapably subjective judgments about editorial decisions, viewpoints and content. Rather, we attempt only to preserve a sufficient number of independently owned outlets to increase the likelihood that independent viewpoints will be available in local markets. The Supreme Court has upheld the Commission's judgment that diversification of ownership enhances

the possibility of achieving greater diversity of viewpoints.

37. *Source Diversity*. A related concept is ''source diversity,'' which refers to the availability of content to consumers from a variety of content producers. Source diversity ensures that the public has access to information and programming from multiple content providers and producers. A wide array of content producers can contribute both to viewpoint diversity (particularly where the content is news and public affairs programming) and program diversity. A number of government efforts, both past and present, have been aimed at promoting source diversity on mass media distribution platforms. Our efforts centered initially on broadcast television, but have broadened in scope more recently to focus on MVPDs such as cable operators and DBS service.

38. *Program Diversity*. Program diversity refers to a variety of programming formats and content. Examples of program categories include formats such as dramas, situation comedies, reality television shows, and newsmagazines, as well as content, such as health, nature, foreign language/ethnic, and cooking. In 1960, when broadcast television was a more dominant mass communications medium in this country, we sought to promote program diversity through direct means. *See, e.g.*, Report and Statement of Policy Re: Commission en banc Programming Inquiry (''1960 Programming Policy Statement''), 44 F.C.C. 2303 (1960).

39. More than twenty years later, the Commission has indicated that markets may serve Americans' demand for diverse programming more effectively than government regulation. In the Dual Network Order (66 FR 32242, June 14, 2001), the Commission allowed common ownership of a major broadcast network and an emerging broadcast network in part because ''if two networks are owned by a single entity, the entity has an incentive to attract an array of viewers with differing interests to produce the largest combined audience for the overall enterprise. This allows for the major network to pursue programming suitable to mass tastes, with the smaller network programming to minority and niche tastes.''

40. *Diversity Issues for Comment*. We seek comment on several aspects of diversity, including how the specific terms should be defined. The airing of news and public affairs programming has traditionally been the focus of viewpoint diversity. We seek comment on whether we should consider non-traditional news programming as contributing to viewpoint diversity. For example, do ''magazine shows'' such as Sixty Minutes and ''talk shows'' such as Hardball contribute to viewpoint diversity as much as (or less or more than) straightforward news broadcasts?

41. Viewpoint diversity has been a central policy objective of the Commission's ownership rules. We seek comment on whether viewpoint diversity should continue to be a primary goal of the Commission's decision-making. The Commission has not viewed source and outlet diversity as policy goals in and of themselves, but as proxies for viewpoint diversity. Should the Commission continue to use source and outlet diversity as proxies to protect and advance viewpoint diversity? Or should each type of diversity be an explicit goal of the Commission's policymaking? Parties advocating that source and/or outlet diversity should be a goal of Commission ownership policies should address how priorities would be set among these types of diversity.

42. Once we define our diversity goal, we must then ask whether the marketplace will protect and advance diversity without regulatory requirements. As set forth in section III, the current media marketplace appears robust in terms of the aggregate number of media outlets. Consumers generally have access to news, public affairs, and entertainment programming from a variety of media outlets—broadcast, cable, satellite, newspapers and the Internet. What has been the effect of this proliferation of new media outlets on the Commission's diversity goals? What effects, if any, do these outlets have on our objective of promoting diversity and the means by which we can best achieve those goals? How should these or other outlets be considered for the purposes of analyzing viewpoint diversity? Are there unique attributes of broadcasting that should lead us to define and measure diversity without reference to other media? Commenters should provide empirical data on consumer substitutability among the various media outlets or programs.

43. In considering these questions, we are particularly interested in the actual experience of the media industry. Has consolidation in local markets led to less or greater diversity? Commenters are encouraged to submit empirical data and analysis demonstrating both the change (either decrease or increase) in diversity levels and the causal link, as opposed to mere correlation, between those changes and greater consolidation in local markets. Evidence comparing the levels of diversity in local communities with different levels of media concentration would be especially useful.

44. If the market alone does not satisfy the Commission's goal of protecting and advancing viewpoint diversity, we must then consider the appropriate regulatory framework for achieving that goal. Traditionally, the Commission has focused on the number of independent owners on the theory that a larger number of owners would help provide greater viewpoint diversity. Commission policy presumes that multiple owners are more likely to provide ''divergent viewpoints on controversial issues,'' which the Commission has stated is ''essential to democracy.'' Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, MM 01–317, *NPRM*, (66 FR 63986, December 11, 2001).'' We invite comment as to this policy. Although courts have affirmed the Commission's ability to limit ownership in pursuit of a diversity of viewpoints, they recently have required that we demonstrate a close connection between the ownership rules and diversity. Therefore, we must examine whether ownership limits are in fact necessary to promote diversity in the media. If we are to maintain ownership limits predicated on preserving diversity, we must inquire into whether our traditional theory of diffused ownership policy is in fact more likely to preserve diversity than a policy that relies on market forces or other measures to foster diversity.

45. If the Commission continues to rely on an independent voice test as a measure for ensuring the appropriate level of diversity, what media outlets or programming services should be included in the independent voice test? For example, should we include cable or DBS? Should commonly-owned media outlets be considered a single media ''voice'' in evaluating diversity? Should cable television count as one voice because the cable operator exercises editorial control over the content that is distributed over that platform? Or should the Commission look to the number of independent programming entities as separate and distinct voices?

46. What other measures of diversity, quantitative or qualitative, should we consider, and what tools do we have to measure diversity with a reasonable degree of accuracy? Are audience demographics an appropriate measure of diversity? Is competition an appropriate proxy for diversity, such that the presence of a competitive local market will assuage our concerns about diversity? Should we take ratings figures or other measures of consumer usage

into account in measuring diversity, and if so, how? In considering the various potential ways to measure diversity, we seek comment on how their use comports with the values and principles embodied in the First Amendment.

47. We also must consider the appropriate geographic area over which to measure diversity. Although radio ownership restrictions are limited to the local market, television ownership is restricted both on the local level and nationally. Does the appropriate geographic area for measuring diversity differ based on whether the programming is local or national in nature? Should the appropriate geographic area for measuring diversity be the same as the relevant geographic market for competition purposes?

48. We also seek comment on whether the level of diversity that the public enjoys varies among different demographic or income groups. Although access to broadcasting services is available to all individuals in a community with the appropriate receiving equipment, access to other forms of media typically requires the user to incur a recurring charge, generally in the form of a subscription fee. Does this or any other differences between broadcasting and other media reduce the level of diversity that certain demographic or income groups enjoy? Does the fact that 86% of American households pay for television impact this analysis? What is the extent of any disparity in access to diversity, and how should we factor in that disparity in our diversity analysis?

49. Would one or more kinds of diversity be better promoted by alternatives to structural regulation, such as behavioral requirements? We invite comment on whether we should promulgate behavioral regulations. What, if any, behavioral requirements should be imposed and how should they be administered? How is diversity served, if at all, by existing behavioral rules such as those that require broadcasters to provide political candidates access to their facilities under certain conditions, or those that require cable systems to set aside channel capacity for certain uses (*e.g.*, PEG, leased access)? What kind of programs and content contribute to viewpoint diversity?

50. In addition to seeking to foster the policy goals discussed, the Commission has historically used the ownership rules to foster ownership by diverse groups, such as minorities, women and small businesses. In the context of this comprehensive review of our ownership rules, we invite comment on whether we should consider such diverse ownership as a goal in this proceeding. If so, how should we accommodate or seek to foster that goal? In addition, we invite comment as to our legal authority to adopt measures to foster that goal.

B. Competition

51. Competition is the second principle underlying the Commission's local ownership rules and policies. In this proceeding, we seek to: (1) Define the Commission's competition policy goal; (2) determine whether the market alone can achieve that goal; and if not, (3) establish the appropriate regulatory framework to protect and advance a competitive media market.

52. We must first consider the Commission's underlying policy objectives in examining competition. The Commission has relied on the principle that competitive markets best serve the public because such markets generally result in lower prices, higher output, more choices for buyers, and more technological progress than markets that are less competitive. In general, the intensity of competition in a given market is directly related to the number of independent firms that compete for the patronage of consumers. We seek comment on how the Commission should define our competition policy goal. In addition to the diversity component of our public interest analysis, should the Commission specifically analyze the competitive nature of the market? Or should we rely on the diversity component of our analysis such that a certain level of diversity would alleviate our competition concerns? Additionally, as discussed, we seek comment on the various types of competition (*i.e.*, competition for viewers/listeners or advertisers) and the appropriate standards and measures to be used.

53. Once we define our competition policy goal, we must then determine whether the market will protect and advance competition without regulatory requirements. As set forth in section III, the current media market appears robust in terms of the aggregate number of outlets. Today, broadcasters operate in an increasingly crowded and dynamic media market. During the past twenty years, the broadcast television industry has faced increasing competition both from additional television stations and from other video delivery systems. The number of full-power television stations has increased 68% since 1980, from 1,000 to almost 1,700, and the number of broadcast networks has grown from three to seven. During that same period, there has been an enormous increase in the supply of non-broadcast video programming available to Americans. Cable television and DBS carry dozens, and often hundreds, of channels and have taken significant market share from broadcast TV stations. Furthermore, Americans have demonstrated an increased willingness to pay for information and programming. Cable television and other MVPDs, including DBS, have reached an 86.4% penetration rate in American homes.

54. What has been the effect of this proliferation of new media outlets on the Commission's competition goals? What effects, if any, do these outlets have on our objective to promote competition and the means by which we can best achieve this goal? How should these and other outlets be considered for the purposes of analyzing competition? Are there unique attributes of broadcasting that should lead us to define and measure competition without reference to other media?

55. If the market alone does not satisfy the Commission's goal of protecting and advancing competition, we must then consider the appropriate regulatory framework for achieving that goal. The Commission has traditionally relied on structural ownership rules, which focus on the number of independent owners, on the theory that a larger number of owners would enhance competition. While our local ownership rules were based largely on preserving viewpoint diversity, the Commission also found that these rules would serve the public interest by preventing broadcasters from ''dominat[ing] television and radio markets and wielding power to the detriment of small owners, advertisers, and the public interest.'' Are structural ownership limits the best means to promote competition in the media? If we are to maintain ownership limits predicated on preserving competition, is our traditional theory of diffused ownership policy more likely to preserve competition than a policy that relies on market forces or other measures to foster competition?

56. If we determine that a competition analysis is necessary, we must define the relevant product and geographic markets in which broadcast TV and radio stations compete, as well as the market share of the participants within the relevant market, and then weigh the benefits of consolidation against the harms to consumers. For example, although ownership consolidation can produce efficiencies that result in stronger stations and improved services to the public, excessive concentration may reduce competition for viewers/listeners and lessen incentives to innovate and improve services to the public.

57. We must first determine the relevant product markets. Generally, broadcast stations compete to attract viewers/listeners and advertising dollars, and they compete as buyers of programming. In past examinations of our ownership rules, we have focused on the program delivery market, the advertising market, and the program production market. These individual product markets vary in significance depending upon the particular rule under examination. In addition, these product markets are interrelated, since advertising revenue is often used to finance program acquisition, which in turn helps to attract viewers/listeners, which then enables media owners to charge advertisers. We have not, however, resolved the issue of the relative weights we should accord each of these product markets for purposes of our competition analysis. We seek comment on whether our competition analysis should focus on competition for advertising revenue, competition for viewers/listeners, a combination of the two, competition for programming, or some other factor.

58. We first address the delivered programming market. Viewers/listeners seeking delivered programming may choose among various providers, including broadcasters, cable systems, DBS, and DARS. Viewers/listeners, however, may also obtain programming from videos, DVDs, CDs, and the Internet. Viewers/listeners may also attend movie theaters, stage theaters, and music concerts. While the Commission previously concluded that delivered video programming could be a relevant market, we seek comment on whether the relevant market should be broader. The answer depends on the degree of substitutability between delivered programming and these other options. Do viewers/listeners consider these other options to be good substitutes for delivered programming? Commenters are encouraged to produce studies and empirical data to support their views regarding the relevant product market. If delivered programming is the relevant product market, should we measure market concentration by using the number of separately owned outlets, or some other metric? If the relevant product market is broader than delivered programming, how should we measure market concentration?

59. Next, we address the advertising market. As the steward of the Communications Act, the Commission is charged with evaluating the potential benefits and harms to the viewing and listening public, not to advertisers. We first seek comment on whether our authority under the Communications Act justifies our basing broadcast ownership regulation on the level of competition in the advertising market. We also seek comment on whether, as a policy matter, the Commission should be concerned with advertising rates, or whether competition concerns in advertising markets are more appropriately governed by the antitrust agencies. What precisely are the harms viewers and listeners would suffer if advertising prices were to rise as a result of more concentrated media markets, and what empirical evidence of these harms is available?

60. The vast majority of American households now pay for information and programming by subscribing to cable television or satellite services. Does this change in consumer viewing habits suggest that the advertising market may not be the best product market to analyze because we do not capture this factor as part of the competitive analysis? For instance, people who subscribe to DBS often watch non-broadcast channels. By reducing viewership of local broadcast channels, non-broadcast channels may reduce advertising revenues flowing to local television stations. How can we capture the impact of a rule change on viewers if we are using a product definition (*e.g.* advertising) that does not account for these viewers/listeners. A recent study indicated that Internet users spend approximately 25% less time watching television stations than non-Internet users. This phenomenon suggests that the Internet may compete with television for viewers, which could reduce advertising revenues for both broadcast and non-broadcast channels. Competitive developments such as these are not reflected in past Commission evaluations of the advertising market, yet they may have a meaningful effect on broadcasters' ability to compete in today's media market. We seek comment on how trends such as these should impact our analysis. In light of market developments, would a direct analysis of competition for viewers/listeners be a more appropriate means for advancing our competition goal? If so, how should we measure entities' market power? Commenters are encouraged to produce studies and empirical data to support or refute claims.

61. If the Commission determines that competition in advertising markets is an important component of our competitive analysis, we must then determine the relevant advertising product market. Historically, the Commission has focused only on broadcast advertising. We seek comment on whether, in today's marketplace, we should broaden the relevant advertising product market to include other media advertising.

62. To what extent do non-broadcast media compete with broadcasters for advertising dollars? For example, the cable television industry has undergone consolidation at both the national and local level. In addition to competing for audience share, cable television now appears to be a more formidable competitor to broadcasters for national and local advertising. In 1980, broadcast TV captured virtually all of the national and local TV ad market (over 99%), whereas cable had less than one percent. In 2000, broadcast TV share declined to 70% of national TV ad revenue and about 80% of local TV ad revenue, and cable increased to 30% and 20%, respectively. How do these and other developments in the media advertising market affect our decision-making? Parties are asked to provide empirical data on the substitutability for advertisers among all media outlets and to comment on how this data should impact how we would define the relevant advertising product markets. How should the differences between local, regional, and national advertising markets factor into our analysis?

63. We also seek comment on the extent, if any, to which our competition analysis should consider the programming purchasing market. Broadcasters, broadcast networks, cable networks, cable operators, DBS networks, and DBS operators create, purchase, or barter for programming. Would relaxation or elimination of the broadcast ownership rules enable broadcasters to exercise monopsony power in the purchase of programming, or is there sufficient competition from other program buyers (*e.g.*, cable and DBS) or from other distribution streams (*e.g.*, Internet or international) to prevent the exercise of such power?

64. Our competition analysis must also define the geographic market for delivered programming and advertising. The geographic extent of the market, the area where buyers can purchase a particular product or service from sellers, is sometimes difficult to determine, since different media outlets serve different geographic areas. What are the implications of these different geographic market definitions for our competition analysis? Would the appropriate geographic market be different if we focused on viewership/listenership rather than advertising?

65. *Innovation.* Change permeates virtually every aspect of the organization of media markets and the operation of media companies. In both

broadcast and cable industries, analog transmission technologies are giving way to digital transmission technologies that will greatly increase operators' ability to offer new, more and better services. In addition to broadcast and cable, consumers also have access to multi-channel video and audio programming from DBS and the Internet and multi-channel audio programming from DARS. Each of these distribution technologies are expanding the number of program choices and developing program content for increasingly specialized audiences. All of these changes reflect innovation, *i.e.*, the development of new products or services or new, less costly ways of producing or delivering existing services.

66. Innovation reflects developments in technology that affect the modern media marketplace. Innovation brings significant benefits to consumers through the creation of new media products and services, but it can destabilize established business practices and customer relationships. Markets in which innovation is a prominent attribute differ from traditional markets, largely because the focal point of competitive rivalry is shifted more toward innovation, which may fundamentally alter the behavior of firms competing in the market. In traditional markets (where product differentiation is not extensive), firms compete for customers primarily based on price and terms of sale of an existing (substitutable) product or service. By contrast, competitors in markets where innovation is an important force face a more dynamic and uncertain market. Innovation competition involves intense ''competition for the market'' such that a successful innovation may result in the sudden economic obsolescence of an existing product or technology (and sometimes the demise of the firms that produce it). Innovation competition tends to produce market leaders that dominate a market for a period of time until supplanted by another innovation introduced by the market leader or a competitor.

67. We seek comment on this analysis. To what extent does innovation competition characterize rivalry in contemporary delivered programming, broadcast advertising, and program production markets? In which media markets does price competition seem to predominate over innovation competition? If innovation competition is pervasive in media markets today, how should our ownership rules be modified to encourage rivalry focused on innovation?

68. Congress has directed the Commission to make the introduction of new technologies and services a priority. We seek comment on whether innovation is a valid policy goal in the consideration of the competitive effects of our ownership rules. In this regard, we invite comment on how our media ownership policies and rules affect the incentives to innovate among broadcasters and other media market competitors. For example, how do our broadcast ownership rules affect innovation in the form of digital television, digital cable, Internet access, and other new technologies? Do our ownership rules hinder continued innovation? Should the Commission actively seek to promote innovation through its ownership rules, or merely avoid interfering with firms' ability to innovate? If the former, what changes to the ownership rules, if any, would promote innovation?

C. Localism

69. The Commission has historically pursued policies aimed at encouraging localism. One statutory basis of the Commission's promotion of localism in broadcasting is section 307 of the 1934 Act, which dates from the Radio Act of 1927 and, in its present form, states: ''In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.'' Another is the Congressional Findings and Policy in connection with the Cable Television Consumer Protection and Competition Act of 1992, which include the finding that ''[a] primary objective and benefit of our nation's system of regulation of broadcast television is the local origination of programming.'' We invite comment on the goal of localism as we have defined it and whether we should define it more narrowly or more broadly.

70. From the earliest days of broadcasting, federal regulation has sought to foster the provision of programming that meets local communities' needs and interests. Thus, the Commission has licensed stations to serve local communities, pursuant to section 307(b) of the 1934 Act, and it has obligated them to serve the needs and interests of their communities. Stations may fulfill this obligation by presenting local news and public affairs programming and by selecting programming based on the particular needs and interests of the station's community. As the Fox Television court recognized, one of the Commission's purposes in retaining the national TV ownership rule was ''to preserve the power of affiliates in bargaining with their networks and thereby allow the affiliates to serve their local communities better.''

71. Localism remains an important attribute of the broadcast media industry. We request comment whether, and to what extent, it is related to ownership limits. For example, do ownership limits tend to ensure an adequate supply of local information intended to meet local needs and interests? Is such news, public affairs, and other programming likely to be available in the current marketplace without ownership limits? To what extent do consumers' access to local news and information on non-broadcast media (*e.g.*, newspapers, cable television, DBS, and the Internet) impact this analysis? How much local news and information is available on a typical cable system and on the Internet, other than news that originates on broadcast stations? Would some combination of market mechanisms and ownership limits, rather than one or the other, best promote localism? Are consolidation and efficiency innovations likely to reduce the level of local programming or reduce the amount of programming that is locally produced?

V. Local Ownership Rules

72. In this section, we discuss and invite comment on possible changes to our multiple ownership rules concerning local broadcasting (the local TV multiple ownership rule and the radio/TV cross-ownership rule). We also invite suggestions of how we could achieve our goals of diversity, competition, and localism by means other than broadcast ownership rules. The options include case-by-case determinations of multiple ownership and a single ownership rule that would apply to all media outlets. We invite comment on how best to define a ''voice'' or other measurement of viewpoint diversity in our local rules. In this latter regard we focus especially on relatively new media such as DBS and the Internet, which have become powerful forces in recent years but are not reflected in our current rules.

A. Local TV Multiple Ownership Rule

73. The local TV ownership rule allows an entity to own two television stations in the same DMA, provided: (1) the Grade B contours of the stations do not overlap; or (2) (a) at least one of the

stations is not ranked among the four highest-ranked stations in the DMA, and (b) at least eight independently owned and operating commercial or non-commercial full-power broadcast television stations would remain in the DMA after the proposed combination (''top four ranked/eight voices test''). In counting the number of independently owned and operating full-power stations that count as voices under the rule, only those stations whose Grade B signal contours overlap with the Grade B contour of at least one of the stations in the proposed combination are counted.

74. The Commission adopted a rule prohibiting common ownership of two TV stations with intersecting Grade B contours in 1964. The rule was based in part on the Commission's earlier ''diversification of service'' rationale, which suggests that the Commission believed its diversity concerns were better promoted by a greater number rather than a lesser number of separately owned outlets. In 1996, Congress directed the Commission to ''conduct a rulemaking proceeding to determine whether to retain, modify, or eliminate its limitations on the number of television stations that a person or entity may own, operate, or control, or have a cognizable interest in, within the same television market.'' The Commission revised the rule to its current form in 1999, citing as reasons growth in the number and variety of local media outlets and the efficiencies and public service benefits that can be obtained from joint ownership. Additionally, the Commission sought to ''facilitate further development of competition in the video marketplace and to strengthen the potential of broadcasters to serve the public interest.'' The Commission made relatively minor changes to the rule on reconsideration. In its remand of the Commission's 1999 Order, the court found the Commission's explanation of its decision to include only broadcast television stations as voices insufficient, although it concluded that the Commission had adequately explained how the local TV ownership rule ''furthers diversity at the local level and is necessary in the 'public interest' under section 202(h) of the 1996 Act.''

75. We ask for comment whether the local TV ownership rule is necessary in the public interest as the result of competition. Does it continue to serve its original purposes of furthering diversity and facilitating competition in the marketplace? Does the rule promote the other goals we set forth, including all the various forms of diversity, competition, and localism? If the rule serves some of our purposes and disserves others, does the balance of its effects argue for keeping, revising, or abolishing the rule? In the following paragraphs, we explore these questions in more detail.

1. The Sinclair Decision

76. The voice test that applies to the current local TV ownership rule includes only TV stations. As discussed in Sinclair, the court invalidated the definition of voices because the Commission had not adequately explained its decision to exclude other media. The court noted that the Commission's decision was inconsistent with the definition of voices for the radio/TV cross-ownership rule, which also considers daily newspapers, radio stations, and incumbent cable operators to be voices. The court noted that, having found for purposes of TV/radio cross-ownership that counting other media voices more accurately reflects the actual level of diversity and competition in the market, the Commission had not explained why such diversity and competition should not also be reflected in its definition of voices for the local TV ownership rule. The court noted that on remand, the Commission may adjust not only the definition of voices, but also the numerical limit, given that there is a relationship between the definition of voices and the choice of a numerical limit.

77. We invite comment on how to apply a voice test for a local TV ownership rule, if we decide to apply one. Should we continue to count only independently owned and operating full power commercial and non-commercial television stations, or should we expand the media included in the definition of a voice? For example, should we include radio stations, daily newspapers, cable systems, DBS and DARS, the Internet, and perhaps other media? To what extent do consumers view these other media as sources of local news and information? In addition, we invite comment as to what numerical or other limit we should set for the number of voices. In current marketplace conditions, what number of voices would preserve our competition and diversity goals? Finally, we invite comment as to whether any definition of ''voices'' we adopt for the local TV ownership rule should be used in other rules, or whether there is adequate justification for distinguishing between voices relevant to one rule and those relevant to another.

2. Diversity

78. The rule barring ownership of two TV stations in the same market was intended to preserve viewpoint diversity and promote competition in local markets. With respect to viewpoint diversity, the prohibition against common ownership of two top-four-ranked stations in the same market was intended to avoid combinations of two stations offering separate local newscasts. The Commission's analysis indicated that the top-four-ranked stations in each market generally had a local newscast, while lower-ranked stations frequently did not. The Commission reasoned that permitting combinations between these two categories of stations, but not among the top four-ranked stations, would better preserve the possibility for different viewpoints in local news presentation, ''which is at the heart of our diversity goal.''

a. Nature of Viewpoints on Local Television

79. We seek evidence on the extent to which local television stations express viewpoints in local newscasts and, if so, whether, and to what extent, those newscasts provide diverse points of view. What are a station's incentives regarding the expression of a viewpoint, both explicitly through editorializing and implicitly through decisions on whether and how to cover particular events? It is our understanding that TV stations have largely abandoned editorials because they fear that viewers who disagree with the viewpoint expressed will temporarily or permanently elect to watch another channel. Is this accurate? If so, what is the effect of this change? News organizations argue that they have a strong economic incentive to keep their news coverage and reporting as balanced and unbiased as possible. On the other hand, it appears that news periodicals and other print media may have defined and distinct viewpoints. If so, are different viewpoints explained or represented in their news reporting? What effects have national, regional, and local cable news had on the expression of viewpoints in local markets? We seek comment on these issues, including whether local TV ownership regulations are necessary to foster viewpoint diversity.

80. We have already suggested that market incentives may preserve program diversity as effectively as more diffused ownership structures. We seek comment on whether owners of broadcast stations have similar incentives with respect to diverse viewpoints. Our understanding is that, when both television stations in a duopoly carry local news, the newscast typically is produced by a single set of personnel using one set of

facilities. Are there different economic incentives among stand-alone stations, duopolies, or ''triopolies'' to produce, in a single newscast, a diversity of viewpoints? What other evidence or economic theories would shed light on the ''viewpoint'' incentives of commonly-owned local broadcast outlets? Are different viewpoints produced by one editor the equivalent for diversity purposes of different viewpoints produced by multiple editors?

b. Connection Between Ownership and Viewpoint

81. In the *1984 Multiple Ownership Order*, the Commission cited evidence that at least some TV station owners allowed local management to make news reporting decisions. In addition, according to testimony before Congress by the President and Chief Operating Officer of Viacom, Inc., CBS' TV stations determine locally how much news to air, what stories are run, and when they are aired. To what extent are station owners or the local news departments responsible for those viewpoints expressed through local newscasts? What evidence is available on this point? Do station owners have formal or informal policies that determine the involvement of station owners in news coverage and reporting decisions? Commenters are requested to provide information bearing on the connection between editorial judgment or news selection and station ownership. If the record indicates a lack of connection between ownership and viewpoint expressed via local news programming, we seek comment on the weight that finding should be accorded in our determination of whether the local TV ownership rule continues to be supportable in its present form.

c. Program Diversity

82. The Commission previously has noted that a single owner of multiple outlets may have stronger incentives to provide diverse entertainment formats, programs, and content on its multiple outlets than would separate station owners. An entity that owns multiple stations in a market may have the incentive to target its programming to appeal to a variety of interests in an effort to maximize audiences, rather than program its multiple outlets with the same format or programming, thereby competing with itself. While acknowledging this viewpoint in the TV Ownership *FNPRM* (60 FR 06490, February 2, 1995), the Commission questioned whether this model would promote a variety of viewpoints with regard to news and public affairs programming, but sought comment on whether it may indeed promote diversity of entertainment formats and programs. We invite comment on whether, and if so how, common ownership leads to provision of more diverse programming with respect to both entertainment and news and public affairs programming in order to maximize audience share. If common ownership of multiple stations promotes program diversity, how does this affect the need for the current local TV ownership rule? Absent a rule, would market forces alone lead to increased program diversity on commonly-owned stations?

83. A second, more fundamental, issue regarding program diversity is raised by the dramatic advances in video delivery technology in the past quarter century. Cable television systems and DBS providers offer dozens, and often hundreds, of channels to subscribers. Entire channels are devoted to particular formats or specialized subjects. The increase in the variety of programming available to many American consumers today suggests that limits on TV station ownership may no longer be needed to promote program diversity in the video market. We seek comment on this analysis in connection with the local TV multiple ownership rule.

3. Competition

84. In the TV Ownership *FNPRM*, the Commission identified three product markets in which television broadcasters operate: the market for delivered programming; the advertising market; and the program production market. Further, the Commission segmented the advertising market into national, national spot, and local markets, based on the nature of the geographic area advertisers wish to reach. The Commission tentatively concluded that cable television directly competes with broadcast television stations in each of these markets, and that broadcast radio and newspapers compete with television in the local advertising market. The Commission sought comment on whether other suppliers of video programming (*e.g.*, multichannel multipoint distribution service and DBS compete with broadcast television stations. The Commission stated that it may not be appropriate to include them because their market penetration was so low that they were not relevant substitutes to a majority of Americans. The record compiled in the 1998 Biennial Report suggested that this situation may have changed. We encourage comment on which types of firms compete in these markets today. Are there media outlets other than those discussed here, *e.g.*, the Internet, that should be considered to be competitors in these product markets? We seek information on the local market share of DBS and multichannel multipoint distribution service, as we generally only have aggregate national subscription data for these services. If broadcast TV competes with cable and other media, do our local broadcast ownership rules affect broadcasters' ability to effectively compete?

85. The Commission tentatively concluded in the TV Ownership *FNPRM* that the geographic market for delivered programming was local; the geographic markets for advertising were both national and local; and the geographic market for program production was national/international in scope. Local geographic markets are particularly difficult to define because the local footprint of a broadcast outlet is likely to be different than the geographic area covered by other media outlets, such as cable systems. We seek comment on how we should define the local geographic media market. Commenters are encouraged to submit data that we could use to identify relevant competitors within geographic markets.

a. Advertising Market

86. For our competitive analysis of the local TV ownership rule, we seek comment on advertising markets. Advertising markets are both national and local in scope because of the differing geographic areas advertisers wish to reach. Certain advertisers wish to reach the entire nation at once with their advertisements and therefore seek out media outlets with a national footprint. The sources of media with a national footprint include broadcast television networks, program syndicators, cable television networks, DBS and possibly cable multiple system operators (''MSOs''). Other advertisers are only interested in paying for advertisements that reach viewers in a specific, local area. These advertisers seek out media with a local footprint. These local media include individual broadcast television stations, individual cable system operators, individual broadcast radio stations, and local newspapers. The ''national spot market'' is a subset of the local advertising market. In this market, national advertisers buy advertising time on certain specific local media outlets in order to bring a specialized advertising message to only some regions of the country. Generally, the national advertisers work with national advertising representative firms to place these advertisements. With newer

technology, however, the television networks are able to place national spot advertisements into their own feeds. We ask for comment on this analysis of advertising markets, and on the policy implications of this or other analyses for our ownership rules. Our goal is to ascertain whether the local TV ownership rule, as currently formulated, continues to be needed to promote competition in these advertising markets.

87. Broadcast television stations compete most directly in the local advertising market. We seek to identify the relevant competitors in this market. Has the consolidation of cable systems into local and regional clusters improved the ability of cable operators to compete with television broadcasters in the local advertising market? At a minimum, we expect that local cable operators that can offer an advertising product comparable to that of local television stations should be included in our analysis. If we conclude that cable operators do compete in the local television advertising market, that would suggest that the rule as currently structured may not be necessary to promote competition in local television advertising markets and that a more relaxed ownership limit may be appropriate. If we conclude that cable operators and television stations constitute the relevant market participants, we propose counting each outlet equally for purposes of assessing local advertising competition. We seek comment on this analysis, including whether a metric other than outlet counting is more appropriate in this area, and on the maximum level of concentration among these outlets that would ensure competition in local television advertising markets. We encourage commenters to submit empirical analyses of whether advertisers view different advertising media as substitutes for local television. Such data might include advertiser spending patterns or information from firms that purchase advertising for clients.

88. It is also possible that radio stations, daily newspapers, and/or direct mail may, for some advertisers, exert competitive pressure on local television advertising rates. If one or more of such media are substitutes for some advertisers but not for others, we seek comment on whether to include such other competing outlets in our advertising competition analysis. Conversely, the exclusion of daily local newspapers from our analysis could result in a local television ownership rule that is unduly restrictive from a competitive perspective. We strongly encourage commenters to address this issue of how our local media ownership rules should account for this issue of partial substitutability.

b. Delivered Video Market

89. For our competitive analysis of the local TV ownership rule, we also seek comment on the market for delivered video programming. In the TV Ownership *FNPRM*, the Commission observed that the time Americans spent viewing television remained steady between 1970 and 1988. The Commission concluded from this stability of television viewing over time that ''delivered video programming'' could be a relevant market. If such data shows comparable levels of television viewing from 1988 to the present, should we continue to define delivered video market programming as a relevant market? If delivered video programming is a relevant market, we must determine how to measure market concentration. The Commission has traditionally used the number of separately owned stations or outlets serving a market. We seek comment, however, on other potential measures of concentration, such as audience share.

90. Consumers have entertainment alternatives to watching television (*i.e.*, delivered video programming from broadcast TV, cable TV, and DBS). These options include video programming from VCRs/DVDs, movie theaters and the Internet, as well as non-video entertainment such as listening to audio programming, reading, and virtually any other activity that a large number of people find entertaining. To what extent do consumers find these entertainment alternatives to be good substitutes for television viewing? If there is substantial substitution between these alternatives and television viewing, this may suggest that the relevant market is broader than delivered video programming. How should this affect our analysis of the need for a local TV ownership rule or how such a rule should be drawn?

91. Assuming that the delivered video market is a relevant product market for our competition analysis, the Commission has tentatively included commercial broadcast television operators, public broadcast television station operators, and cable system operators to be economically relevant alternative suppliers of delivered video programming. The rapid growth of DBS since 1995 requires us to include DBS as a strong participant in the delivered video market. We seek comment on other media that should be included in the delivered video market. For example, in our Eighth Annual MVPD Competition Report, we detailed the status of additional potential competitors, including: wireless cable systems, SMATV systems, local exchange carriers, open video systems, Internet video, home video sales and rentals, electric utilities, and broadband service providers. Some of these media are not available in many markets and, thus, may not be relevant substitutes to a majority of Americans. Should a level of market penetration be deemed at which a non-broadcast video delivery media directly competes with broadcast television stations? How does the fact that there are no consumer fees for broadcast TV affect our analysis?

92. While some video delivery media may be considered good substitutes for entertainment programming, are the same media good substitutes for local news and public affairs programming? What measures should we use to determine whether consumers view different media as substitutes for entertainment programming or news programming? Although cable systems carry local broadcast stations and therefore may be considered good substitutes for both entertainment programming and local news and public affairs programming, DBS systems and other media may carry less local news and public affairs programming. To what extent, if any, should our analysis of competition in the market for delivered programming differ from our analysis of viewpoint and program diversity?

c. Video Program Production Market

93. Television stations, along with TV networks, cable networks, cable operators, DBS networks and DBS operators purchase or barter for video programming. The program production market could be affected if relaxation of the local TV ownership rule permits a broadcaster to exercise significant market power in the purchase of video programming. The result might be that suppliers of video programming would be forced to sell their product at below competitive market prices in order to gain access to the local market controlled by one or a few local group owners. The potential for the exercise of such market power, however, depends critically on the absence of a sufficient number of competitors. The ever-increasing number of alternative providers of delivered video programming in virtually every major market may mitigate the potential for distorting the prices of video programming by providing program producers with additional outlets for their product. We solicit comment on this point and evidence on the potential

market power in the purchase of video programming if we were to relax the local ownership rule.

d. Innovation

94. We seek comment on the impact that the local TV ownership limits may have on innovation in the media marketplace. Does our current rule promote innovation? Would relaxation of the local TV ownership rule increase incentives or resources to provide innovative broadcast programming or new broadcast-based technologies or services? What effect, if any, would a relaxed local ownership rule have on the transition to digital television, or the provision of other services by a local TV station?

4. Localism

95. We seek comment on whether and if so, how the local TV ownership rule affects localism. Does the local TV ownership rule affect either the quantity or quality of local news and other programming of local interest produced and aired by local stations? Does it affect the local selection of news content that is aired? We request that commenters provide data on the impact that TV duopolies and Local Marketing Agreements (''LMAs'') have had on the production of local programming by stations involved in such combinations or arrangements. According to testimony before Congress by the President and Chief Operating Officer of Viacom, Inc., after CBS' combination with Viacom, which resulted in six duopoly markets, CBS had, or planned to have, half-hour news spots or hourly updates on stations, in five different markets, that had not run such programming before. We invite comment on whether these assertions reflect industry-wide trends. We ask commenters to provide empirical data that demonstrates increased or decreased levels of local programming as a result of consolidation.

96. In the 1984 Multiple Ownership *Order*, the Commission cited awards received by TV stations ''from leading professional organizations and community organizations'' as one relevant indicator of local news quality. If such awards are a reasonable barometer of news ''quality,'' we request empirical analyses of whether these awards tend to be earned systematically more or less often by TV duopolies and/or LMAs.

97. Local TV newscasts and local public affairs shows are an important service provided by local television stations. The cost of producing those programs may represent a significant portion of a station's budget, particularly in small markets where the fixed costs of production are spread over a relatively small customer base. We seek comment on whether the current local TV ownership rule affects the viability of existing local newscasts and/or potential newscasts, particularly for small stations. Commenters asserting that a relaxation of the local TV ownership rule will result in more local news are requested to specifically address whether such greater output outweighs the potential loss of diverse voices among stations that previously had separate newscasts. Are there other factors or policy goals we should consider in determining whether to retain, modify or eliminate the local TV ownership rule?

B. Radio/TV Cross-Ownership Rule

98. The radio/TV cross-ownership rule limits the number of commercial radio and television stations one entity may own in a market. The rule allows common ownership of at least one television station and one radio station in a market. In larger markets, a single entity may own additional radio stations depending on the number of other voices in the market. In larger markets, a single entity may own additional radio stations depending on the number of other voices in the market. 47 CFR 73.3555(c). The radio/TV cross-ownership rule generally allows common ownership of one or two TV stations and up to six radio stations in any market where at least twenty independent ''voices'' would remain post-combination; two TV stations and up to four radio stations in a market where at least ten independent ''voices'' would remain post-combination; and one TV and one radio station notwithstanding the number of independent ''voices'' in the market. If permitted under the local radio ownership rules, where an entity may own two commercial TV stations and six commercial radio stations, it may own one commercial TV station and seven commercial radio stations. For this rule, a ''voice'' includes independently owned and operating same-market, commercial and noncommercial broadcast TV, radio stations, independently owned daily newspapers of a certain circulation, and cable systems providing generally available service to television households in a DMA, provided that all cable systems within the DMA are counted as a single voice (Local TV Ownership *R&O*).

99. The original rule, which prohibited radio/TV cross-ownership, was adopted in 1970. In adopting the rule, the Commission stated explicitly that ''the principal purpose of the proposed rules is to promote diversity of viewpoints in the same area * * * [W]e think it clear that promoting diversity of ownership also promotes competition.'' The Commission adopted a presumptive waiver policy to permit certain radio/TV combinations in 1989, and relaxed the rule to its current form in 1999. The Commission relaxed the radio/TV cross-ownership rule to balance its traditional diversity and competition concerns with its desire to permit broadcasters and the public to realize the benefits of radio-television common ownership. The modifications were intended to ease administrative burdens and provide predictability to broadcasters in structuring their business transactions. In the 1998 Biennial Report, the Commission concluded that no further changes were warranted because the radio/TV cross-ownership rule had been so recently relaxed, but it committed to monitor the market effects of our deregulatory actions to determine whether further changes are warranted.

100. We ask parties to comment on whether the radio/TV cross-ownership rule is necessary in the public interest as the result of competition. Does it continue to serve its original purposes of promoting economic competition and diversity, particularly viewpoint diversity? Does the rule promote the other goals we set forth, including the various forms of diversity and localism? If the rule serves some of our purposes and disserves others, does the balance of its effects argue for keeping, revising, or abolishing the rule?

101. Some of the issues and requests for data contained in the preceding section on the local TV ownership rule overlap with our analysis of the radio/TV cross-ownership rule. For example, our request for comment on consumers' sources for news and information is directly relevant to both the local TV ownership rule and radio/TV cross-ownership rule. Issues of viewpoint diversity and localism, and issues of competition in the advertising market and innovation, are also relevant to both the local TV ownership rule and the radio/TV cross-ownership rule. Where appropriate, we will apply data and analysis from that section to our analysis of the radio/TV cross-ownership rule.

1. Viewpoint Diversity

102. The current radio/TV cross-ownership rule counts as a media voice each independently owned and operating same-market full-power commercial and noncommercial broadcast television and radio station. It also counts certain types of daily

newspapers and cable systems because ''such media are an important source of news and information on issues of local concern and compete with radio and television, at least to some extent, as advertising outlets.'' Thus, the current rule implies that only these particular types of media contribute to viewpoint diversity. The rule does not account for news available on Internet Web sites, DBS, cable overbuilds, magazines or weekly newspapers. In our 1984 review of the national TV ownership rule, however, we concluded that, with respect to viewpoint diversity, the market includes a wide variety of media types engaged in the dissemination of ideas, including not only television and radio outlets, but also ''cable, other video media, and numerous print media as well.'' Should those media be counted in a new voice test for radio/TV cross-ownership, and if so, to what extent? Should we count each independently owned cable network carried by a cable system in a market as one voice? Does competition among these media render the current restriction unnecessary? Finally, we seek comment on any alternatives to a voice test.

2. Localism

103. In 1989, the Commission concluded that the cost savings and aggregated resources of combined radio-television operations appeared to contribute to more news, public affairs and other non-entertainment programming. Based in part on that finding, the Commission adopted a new presumptive waiver policy allowing increased radio-television ownership in the top-25 television markets and in certain situations involving the acquisition of ''failed'' stations. It anticipated that this policy would lead to a limited number of additional radio-television combinations that would enable the Commission to obtain additional evidence regarding the advantages and disadvantages of maintaining the cross-ownership rule. We seek comment on the quantities of local news and public affairs programming provided by TV-radio combinations and stand-alone TV and radio stations in those same markets. Are combinations and stand-alone stations providing comparable quantities of such programming? If TV-radio combinations produce a greater quantity of news programming than non-combined stations, does that suggest that greater cross-ownership among TV and radio stations would produce more news and/or public affairs programming? If the quantity of news and public affairs is the same or less on cross-owned stations, does it suggest the opposite?

3. Competition

104. In analyzing the relationship of the radio/TV cross-ownership rule and our goal of competition, the key issue under our traditional competition framework is the extent to which radio and television stations compete with each other to attract advertising revenue. The stronger the competition between these two outlets, the more relevant a cross-ownership limit may be. Relaxation or elimination of the rule may not harm competition if the record shows that there is weak substitution between radio and television advertising. We welcome comment, as well as any empirical studies, on the substitution between radio and television advertising. We also wish to consider what bearing advertising substitution between radio, television, and other outlets, such as newspapers, magazines, and Internet Web sites, may have on this rule. Any empirical work demonstrating such advertising substitution is strongly encouraged.

105. We are also concerned with the impact that radio/TV cross-ownership limits may have on innovation in the media marketplace. Does our current rule promote innovation? Would relaxation of the radio/TV cross-ownership rule increase incentives to provide innovative broadcast programming or new broadcast-based technologies or services? Are there other factors or policy goals we should consider in determining whether to retain, modify, or eliminate the radio/TV cross-ownership rule?

C. Alternative Means To Achieve Goals

106. If the record demonstrates that the current ownership rules are no longer necessary to actually serve the stated goals and the public interest, we seek comment on the most appropriate means to achieve the stated goals. We see, at a minimum, three alternatives: (1) A case-by-case approach; (2) outlet specific rules; and (3) a single local media ownership rule covering all outlets. Often, bright line structural regulations have the effect of being both over-inclusive and under-inclusive. That is, a prophylactic structural rule may prohibit a combination that poses little competitive or consumer harm, or entails substantial consumer benefits. Or, such a limit may allow anti-competitive combinations that nevertheless satisfy the rule. We ask whether our structural regulations should be replaced with a case-by-case review of transactions so that a fact-specific analysis of the impact on our policy goals can be conducted. In the alternative, or in conjunction with a case-by-case review, should the Commission rely solely on the unfettered marketplace to achieve its stated policy goals? If we decide to retain structural rules, should the Commission retain a set of outlet specific rules similar in form to our current rules?

107. We recognize that a pure case-by-case approach could create an unnecessary level of uncertainty among media firms. Such uncertainty could be mitigated by one or more ''soft'' ownership caps. A soft cap would identify a certain level of ownership concentration below which a transaction would be presumed lawful, and above which the transaction would be unlikely to be permitted, but would be reviewed by the Commission on a case-by-case basis. If we adopted one or more soft caps, we anticipate identifying the factors we would consider in evaluating proposed transactions. We seek comment on these matters.

108. If we decide to retain structural rules, should the Commission retain a set of outlet specific rules similar in form to our current rules? This type of ownership rule structure may permit the Commission to limit specific harms and promote specific benefits in a more targeted fashion than would case-by-case review. For example, if we found that two outlet types were both the undisputed leaders in contributing to viewpoint diversity and were the only two competitors in a particular advertising market, we would explore whether a cross-ownership limitation was necessary to preserve viewpoint diversity and economic competition.

109. As suggested by this hypothetical such an outlet specific method could require persuasive evidence that particular outlets are sufficiently unique that they merit treatment separate from other outlets. The Sinclair court held that we failed to justify applying disparate voice tests to broadcast television stations in the local TV multiple ownership and the radio/TV cross-ownership rules. For this reason, should the Commission adopt a local single media ownership rule that is applicable to all or some media outlets and dependent on the number of independent ''voices'' in any particular market? This single rule option is intended to address only those instances in which the ownership of multiple media outlets included a broadcast station. A single rule applicable to all media might help avoid the type of inconsistency criticized by the Sinclair court. The goal of a single rule would be to replace outlet specific rules that no

longer may be justified by themselves but which, viewed collectively, may continue to be necessary in some form to promote competition, diversity and localism. We seek comment on these proposals.

110. A key factor in whether we pursue a single framework or more outlet specific policies, or other options, is the feasibility of synthesizing the results of our various inquiries. We have identified the promotion of diversity, competition, and localism as potential guiding principles in setting ownership policies. It is conceivable that certain media outlets are substitutes for diversity purposes, but are not substitutes from the perspective of advertisers or program producers. In that situation, one option might be to: (1) maintain same-outlet restrictions (*e.g.*, a limit on the number of commonly-owned radio stations per market), perhaps based on market size, in order to preserve economic competition among those outlets that directly compete with each other; and (2) eliminate the cross-ownership rules based on clear evidence that Americans today rely on a far wider array of media outlets than they did decades ago, when the cross-ownership rules were first adopted. Or, if the evidence supported a finding that certain different types of outlets were particularly important news sources, we might replace the cross-ownership limits with an overall per-market cap on media outlets. We seek comment on whether this type of ownership framework would be an appropriate response to a record that showed that the markets for advertising and viewpoint diversity are not coterminous. If we adopt such a framework, should we adopt grandfathering provisions, and if so, what limits should we set?

111. Another approach to setting a single ownership rule would be to focus on promoting viewpoint diversity. Such a rule might be appropriate if evidence in the record were to show that certain media constitute an ''essential class'' of news outlets for Americans today. If the evidence before us were to show, for example, that local television stations, local cable operators, and daily newspapers were a distinct group of influential news outlets, we might consider a local media ownership rule that permitted one entity to own up to a certain percentage of such outlets in a local market. Such a rule could limit the common ownership of cable systems and broadcast stations in a market. We seek comment on the implications of such a result. In setting the appropriate percentage cap, we would rely partly on the extent to which the evidence indicated that all other media—such as radio, the Internet, weekly newspapers, magazines, cable and DBS—were significant (though not ''essential'') outlets for Americans to obtain news and information. We seek comment on this option and, in particular, on whether such a rule aimed at promoting viewpoint diversity would effectively promote competition in local media markets as well. By limiting application of this rule to only those instances in which the ownership of multiple media outlets includes a broadcast station, would we impair broadcasters' ability to compete in today's media marketplace?

D. ''Voice'' or Other Test

112. We next address three subjects related to a so-called ''voice test'' to assure competition and diversity in a given market: (1) how to reformulate our mechanism for measuring diversity and competition in a market; (2) how to accord different weights to different media types to the extent that they are relied on by consumers differently; and (3) how to account for diversity and competition via MVPDs and the Internet in a revised voice test.

1. Creating a New Metric

113. In this section, we explore how to reformulate our mechanism for measuring diversity and competition in a given market. All four of our existing local broadcast ownership rules are aimed at preserving diversity and competition. The radio/TV cross-ownership rule employs a voice test that allows varying levels of broadcast ownership based on the number of broadcast stations, major newspapers and cable systems in the market. Such market-specific mechanisms, properly implemented, represent an effective mechanism for addressing media ownership limits in widely divergent market conditions.

114. Thus, we initially explore whether to continue to use a voice test to guarantee a minimum level of diversity and competition in a given market. The two current voice tests collectively include television stations, cable systems, radio stations, and daily newspapers as ''voices.'' Other media that we could consider include Internet web sites (including video services and online radio stations), DARS, magazines, DBS operators, weekly newspapers, and national newspapers. We request comment, including empirical evidence, on whether each of these additional outlets should be counted in a revised voice test.

2. Weighting the Voices

115. If data show that consumers rely to varying degrees on different types of outlets for news and public affairs, we seek comment on how we might design a test that accords different weights to different outlet types. For example, it may be appropriate to consider using weights based on such factors as audience reach, ownership structure, the percent of programming or print content devoted to local news, and/or consumer use patterns. Such an approach could be a more accurate measure of diversity and competition than the binary ''voice'' model (*i.e.*, an outlet either is or is not a voice), but may be difficult to design and administer over time as industry conditions change. This raises the question of how to account for such changes in a manner that does not undermine certainty and predictability.

116. If we pursue a weighted approach to measuring diversity and competition in a given market, we would need a way to quantify the relative contributions of each type of outlet. We are uncertain whether traditional all-news programming should continue to be the only measure of an outlet's role in the market, or whether other types of information that people obtain from the media should count as well. Such quasi-news sources might include cable and DBS channels covering business or sports, and websites devoted to those subjects. In addition, some non-news programming on broadcast television, such as ''60 Minutes,'' may be similar to news programming in certain respects. We seek comment on the relevance of these sources of news and information to a weighting system for various media outlets.

117. We also seek comment on the relevance of current MVPD and Internet penetration levels in considering the contributions of MVPDs and the Internet to diversity and competition. Broadcast television and radio are available to virtually all Americans who purchase a television or radio, but the Internet, DBS, and cable require monthly subscriptions. Does this fact support a difference in the treatment of these media, such as a rule that counts only broadcast television and radio? Or is the fact that some media are ''free'' and others require subscriptions immaterial to their impact on the American people? In the past decade, non-broadcast media have become widely available and have been subscribed to by the majority of American homes. Are they now ubiquitous? Do the Americans who still consume only broadcast television and

radio have any distinguishing features, such as location or level of income or education?

118. Traditional voice tests do not consider the entire range of news sources available to the public. A vast majority of people may choose to receive news and information from a single source (*e.g.*, a local television broadcast). This fact does not necessarily imply that the public has limited access to many other sources of news and information (including the Internet, for example). In other words, a lack of diversity in the outlets that consumers typically view or listen to does not necessarily imply that consumers have limited access to diverse viewpoints or to multiple sources of news and information. We seek recommendations on how to accurately capture the vibrancy and variety of today's media market in a framework that is predictable, adaptable to future marketplace changes, and judicially sustainable.

3. Accounting for Diversity and Competition Via MVPDs and the Internet

119. MVPDs and the Internet have posed unique challenges under past formulations of the voice test. Unlike TV and radio stations, MVPDs and the Internet are single outlets furnishing access to multiple news sources. In analyzing whether and how MVPDs, such as cable systems, should be counted as voices, we must examine not only how much content is available, but also who controls viewers' access to it. We decided in 1999, in the context of the radio/TV cross-ownership rule, to count a cable system as one voice because ''most programming is either originated or selected by the cable system operator, who thereby ultimately controls the content of such programming.'' However, cable systems also give viewers access to much information on matters of public concern. For example, it appears that a typical household that subscribed to cable (or DBS) service could find—on CNN, CNBC, MSNBC, Fox News, and C–SPAN—at least as many sources of information about national issues as it would find on multiple broadcast TV and radio stations. It also appears, however, that most MVPDs carry largely the same all-news channels and other channels with specialized news and information such as business, sports, and weather. Under one possible approach, we could choose to count CNN as one voice even if it were carried in a community by the largest cable operator, an overbuilder, and two or more DBS providers.

120. Another approach would be to count each independent owner as a voice, so that if one entity owned a broadcast station, a cable system and several channels on it, an Internet access service, and a web page in the same area, it would count as one voice instead of many. Although we have listed many sources of media programming and distribution, industry consolidation and the reduction in the number of owners could diminish diversity and competition across these outlets.

121. We invite comment on DBS's contribution to diversity and competition, and whether DBS should be considered a voice in any rule we adopt. At a minimum, DBS contributes to viewpoint diversity through its editorial control over channel selection. In addition, DBS systems are, like cable systems, platforms and outlets for far more channels and programs than can be presented by broadcasters. In the past we have not counted DBS as a voice because it did not then provide local programming. We invite comment as to whether that rationale is still valid today. Should we consider DBS a voice because of the range of programs and channels it provides? Do these systems contribute to diversity and competition regardless of the extent to which DBS provides local programming?

122. In addition, DBS operators' transmission of local broadcast channels has greatly increased since the enactment of the Satellite Home Viewer Improvement Act of 1999 (''SHVIA''), which permitted DBS operators to retransmit local broadcast signals into local markets. We ask whether, in light of SHVIA, DBS can fairly be classified as an outlet for the purpose of any new voice test. Does the local programming available on DBS merely reproduce the information obtainable via over-the-air television and cable? Does DBS provide a source of diversity and competition to consumers in rural areas that are not served by local TV stations or cable?

123. We request comment on whether the foregoing analysis of cable and DBS is correct. Based on that analysis, should we count these media as voices, and if so, how? For example, where there are two cable systems serving the same area, should we count each as a voice? Or, should we count, as independent voices, each independently owned source of news and public affairs programming that is made available to cable and DBS subscribers? When the same programming is made available in a community by more than one MVPD, *e.g.*, if each one provides CNN, should that count as one voice or more? How, if at all, should the same question be answered for broadcast stations in the same area that carry programs from the same source, such as a single news broadcast? On an AOL Time Warner cable system, for example, should CNN count as a voice independent of AOL Time Warner? Should we count each independently owned network carried by a cable system or DBS provider in a market as one voice? On cable television, do PEG channels carry enough information and viewpoints to count as one or more voices? How common are locally or regionally oriented cable offerings such as New England Cable News, the borough-specific cable channels in New York City, and NorthWest Cable News that serves Seattle and the Pacific Northwest? Finally, we seek comment on the ability of cable operators and DBS providers to act as content gatekeepers by choosing which programming is selected to fill the available channel capacity. Should their status as gatekeepers affect whether or how we count them as voices?

124. Like cable and DBS, the Internet also presents unique challenges in the context of diversity and competition. In 1999, we decided not to count the Internet as a voice, in part because ''many still do not have access to this new medium.'' Is the Internet now so widely accessible that it should count as a voice? Are there characteristics of the acquisition of information on the Internet, such as the need to click a hyperlink or key in a website's Internet address, that make it different from broadcasting such that we should not count it? Or, should these characteristics of the Internet affect the significance we give the Internet? If so, should it count as one voice or many? On the Internet, how much news and how many viewpoints are original; that is, not merely re-purposed content that also is available from local and national media outlets, such as TV stations, networks, and newspapers? We assume that the Internet permits the user to access any news source having a presence on the World Wide Web. Is there any instance of an Internet service provider (''ISP'') or other entity acting as an ''Internet gatekeeper'' by denying a subscriber access to a news source on the World Wide Web? Is the role of a gatekeeper different between the Internet and cable or DBS? We also assume that, unlike cable or DBS, the Internet has unlimited capacity such that there is no limit on the number of news sources that a user can reach. We seek comment on these assumptions and their relevance to our analysis of diversity and competition.

VI. National Ownership Rules

125. In this section we consider whether the national TV ownership rule and the dual network rule continue to meet the statutory standard. Unlike the local TV ownership rule and the radio/TV cross-ownership rule, these two rules do not directly limit local media ownership, although they may indirectly affect viewpoint diversity in a given local market by limiting network ownership across markets. As such, they appear to play a less direct role in our core policy concern of viewpoint diversity, although we invite comment on this issue.

A. National TV Ownership Rule

126. The national TV ownership rule prohibits an entity from owning television stations that collectively would reach more than 35% of U.S. television households. Reach is defined as the number of television households in the TV DMA to which each owned station is assigned. 47 CFR 73.3555(e)(1). In the 1999 National Television Ownership *R&O* (64 FR 50647, September 17, 1999) the Commission clarified that no market will be counted more than once when calculating the 35% cap. DMAs, rather than Arbitron's Areas of Dominant Influence, are used to define a station's market for the purpose of calculating national audience reach. Broadcast Television National Ownership Rules, Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules. VHF stations are attributed with all TV households in the DMA; UHF stations are attributable with 50% of the DMA households (the ''UHF discount''). VHF stations are attributed with all TV households in the DMA; UHF stations are attributable with 50% of the DMA households (the ''UHF discount'').

127. The Commission first adopted national ownership restrictions for television broadcast stations in 1941 by imposing numerical caps on the number of stations that could be commonly-owned. The rule was amended a number of times thereafter to increase the cap on the number of television stations. In 1985, the station cap was raised from 7 to 12 and an audience reach limit of 25% was added. The stated purposes of these early national TV ownership limits were, in general, to balance several goals. On the one hand, the Commission wanted to promote competition and ''diversification of program and service viewpoints.'' On the other hand, common ownership of stations in different areas allows efficiencies to be realized, and the Commission raised numerical limits as the number of television stations increased.

128. In the 1996 Act, Congress directed the Commission to eliminate the station cap and raise the national reach limit from 25% to 35%. In the 1998 Biennial Report, the Commission addressed the issue of whether or not to modify or eliminate the 35% national audience reach limit. The Commission determined that the changes made in 1999 to the local television ownership rule should be observed and assessed before making any further changes to the national limit. It also found that many group owners had acquired large numbers of stations nationwide, and that this trend needed further observation. The Commission stated that consolidation of ownership of television stations in the hands of a few national networks would not serve the public interest. The Commission reasoned that national networks have a strong economic interest in having their affiliates clear (that is, decide to broadcast) all network programming, and independently owned affiliates play a valuable counterbalancing role because they have the right to decide whether to clear network programming or to air instead programming from other sources that they believe better serves the needs and interests of the local communities to which they are licensed. It also said that independent ownership of stations increases the diversity of programming by providing an outlet for non-network programming. The Commission referred to possible competitive problems in the national markets for advertising and program production. The court in Fox Television has remanded the Commission's decision in the 1998 Biennial Review not to consider further changes in the national TV ownership rule. In this section, we invite comment on whether to retain, eliminate, or modify the national TV ownership rule.

129. We ask for comment about whether the current national TV ownership rule is necessary in the public interest as the result of competition. Does it continue to serve its original purposes of promoting competition and viewpoint and programming diversity? Does the rule promote the other goals in described section IV, including localism and the various other forms of diversity and competition? If the rule serves some of our purposes and disserves others, does the balance of its effects argue for keeping, revising, or abolishing the rule?

130. We invite comment on the relevance and continued efficacy of the UHF discount. The UHF discount is intended to recognize the deficiencies in over-the-air UHF reception in comparison to VHF reception. The Commission retained the 50% UHF discount in the 1998 Biennial Report, concluding that the signal disparity between UHF and VHF had not yet been eliminated. Noting that the signal disparity should be rectified to some extent by digital television, however, the Commission stated in the 1998 Biennial Report that when the transition to digital television is near completion, we would issue a *NPRM* proposing a phased-in elimination of the discount.

131. We ask the parties to comment on the extent of the UHF ''handicap'' in today's marketplace. In particular, over 86% of consumers receive video programming from MVPDs where UHF signal quality is largely equalized with that of VHF channels. In addition, cable has must carry obligations with respect to UHF stations and DBS operators carry UHF stations in any local market where they elect to carry at least one local broadcast signal. We seek comment on whether the UHF discount continues to be necessary in light of the effect of MVPDs on UHF signal issues.

1. Diversity

132. In 1984, the Commission concluded that the relevant geographic market for considering viewpoint diversity is local, not national. Thus, in the 1984 Multiple Ownership *Order,* the Commission relaxed the national ownership restrictions. It raised the station cap from seven stations to twelve stations and said that the entire rule would be eliminated (or sunset) in six years. The Commission reasoned that the area from which consumers can select the relevant mass media alternatives is generally the local community in which they work and live, where radio and TV signals are available in discrete local markets, and other local media outlets are abundantly available. It determined that the lack of relevance of the rule to local viewpoint diversity ''persuades us that elimination of the national ownership rule is unlikely to have an adverse impact on the number of independent viewpoints available to consumers.'' It also determined that elimination of the national TV ownership rule posed no threat to the diversity of independent viewpoints in the information and entertainment markets, because a wide range of media outlets existed and because the rule did not affect the number of viewpoints in the relevant local markets.

133. On reconsideration, the Commission added a 25% audience

reach limit to the 12 station cap and eliminated the sunset provision adopted in the 1984 Multiple Ownership Order, concluding that ''the complete and abrupt elimination of our national multiple ownership rules might engender a precipitous and potentially disruptive restructuring of the broadcast industry.'' The Commission reiterated that diversity of viewpoint was determined at the local level. The Commission also affirmed that the 1984 decision: balanced the need for a presumptive rule equating ownership diversity at the national level with viewpoint diversity against the demonstrable benefits of group ownership. In the context of this balancing process, we found that national ownership diversity is not of primary relevance in promoting viewpoint diversity. In this regard we noted that the most important idea markets are local . . . [N]ational broadcast ownership limits, as opposed to local ownership limits, ordinarily are not pertinent to assuring a diversity of views to the constituent elements of the American public.

134. In the 1998 Biennial Report, the Commission reconsidered its views regarding the relationship between the national TV ownership rule and viewpoint diversity. It asserted that independently-owned affiliates play a valuable role by ''counterbalancing'' the networks' strong economic incentive in clearing all network programming ''because they have the right . . . to air instead'' programming more responsive to local concerns. In determining not to modify or eliminate the rule, it noted that the ''competitive concerns'' of opponents of relaxing or eliminating the [national TV ownership rule], including the concern that the number of viewpoints expressed nationally would be reduced, were more convincing than the comments in support of relaxation or elimination.

135. In Fox Television, the DC Circuit remanded the decision in the 1998 Biennial Report to retain the national TV ownership rule, holding that the decision to retain it was arbitrary and capricious. The court took note of the Commission's 1984 Multiple Ownership Order, which concluded that the rule should be repealed because it focuses on national, rather than local, markets and thus has an insignificant effect on viewpoint diversity. It also took note of the Commission's 1984 assertion that it had no evidence suggesting that stations which are not group-owned better respond to community needs, or spend more of their revenues on local programming. When the Commission changed course by retaining the limit in the 1998 Biennial Report, it failed to explain why it no longer considered the reasoning in its 1984 Multiple Ownership Order to be persuasive. According to the court, the Commission's failure to explain this significant deviation from its earlier conclusions rendered its 1998 decision arbitrary and capricious.

136. It appears that the national TV ownership rule is not directly relevant, and perhaps not relevant at all, to the goal of promoting viewpoint diversity. Consumers generally do not travel to other cities to obtain viewpoints. Instead, they rely on outlets for news sources, such as TV, radio, newspapers, Internet, cable, DBS, and magazines that are available in their own cities. As a result, the expression of viewpoints by television stations in one city does not appear to affect in any meaningful way the viewpoints available to people located in other cities. We seek comment on this analysis as well as on the general question whether our national TV ownership rule is relevant to our goal of promoting viewpoint diversity on a local level. Is there a relationship between the national ownership rule and the dual network rule with regard to viewpoint diversity? For example, could we safely repeal the national ownership rule as long as we maintain the dual network rule because the latter renders more likely the preservation of at least four different newscasts in each market? Does, as the Commission concluded in the 1998 Biennial Report, independent ownership of stations increase diversity of programming by providing outlets for non-network programming? Do commenters believe that the broadcast of non-network programming promotes our goal of source diversity?

137. We seek comment on the role of independently owned and operated stations. In deciding not to relax the national ownership rule in the 1998 Biennial Report, the Commission said: We do not believe that consolidation of ownership of all or most of the television stations in the country in the hands of a few national networks would serve the public interest. The national networks have a strong economic interest in clearing all network programs, and we believe that independently owned affiliates play a valuable counterbalancing role because they have the right to decide whether to clear network programming or to air instead programming from other sources that they believe better serves the needs and interest of the local communities to which they are licensed. Independent ownership of stations also increases the diversity of programming by providing an outlet for non-network programming. In Fox Television, the court found our explanation to be a plausible justification for the national ownership rule and consistent with the requirements in section 202(h). The court stated, however, that the Commission's conclusion was not adequately supported by the record: Although we do not agree with the networks that this reason is unresponsive to section 202(h) * * * we must agree that the Commission's failure to address itself to the contrary views it expressed in the 1984 Report effectively undermines its rationale. * * * The [1998 Biennial Report] does not indicate the Commission has since received such evidence or otherwise found reason to repudiate its prior decision. We seek comment on whether independently owned, network-affiliated stations offer more diverse programming and/or programming from more diverse sources than affiliated stations that are owned and operated by their network. We ask parties to provide evidence supporting their comments on this issue. Are there other factors or policy goals we should consider in determining whether to retain, modify, or eliminate the national TV ownership rule?

2. Competition

138. We seek comment on how the national TV ownership rule affects the ability of TV station group owners to compete against other video providers. We are interested in the impact this rule may have on the program production market and the advertising market. We also ask whether examination of advertising competition is, or should be, relevant to this analysis. Commenters are asked to analyze the impact of the transaction costs and uncertainties associated with network-affiliate relationships as well as any pro-competitive benefits of the current national television ownership rule. We also seek comment on whether the national television ownership rule artificially constrains the largest group owners from employing their skills in additional markets, and whether and how this operates to the detriment of consumers in those markets.

a. Program Production Market

139. Broadcast television stations organize a schedule of video programming which they either produce themselves or purchase from others in a national market. The TV Ownership *FNPRM* expressed a competitive concern about the ability of large purchasers of video programming to exercise monopsony power and

artificially restrict the price paid for programming. The market for program production appears to consist of firms that produce niche and general entertainment programming for sale to program packagers. Program packagers include cable networks, broadcast television networks, program syndicators, and individual owners of television stations (regardless of whether the station also carries network programming).

140. We seek comment on whether the national TV ownership rule promotes or hinders competition in the program production market. We ask commenters to address whether raising the national ownership cap would facilitate monopsony power. Our answer to this question depends significantly on the identification of market participants.

141. Regulatory changes have occurred in the past six years that may have affected the program production market. Prior to the 1996 increase in the national TV ownership cap, the Commission eliminated the financial interest and syndication rules (''fin-syn'') and the prime time access rule (''PTAR''). Can the effects of the 1996 change in the national ownership cap be separated from the effects of the repeal of the fin-syn and PTAR rules? If so, we ask commenters to identify those effects and to address whether the 35% cap continues to be necessary to promote a robust and diverse program production market.

b. Advertising Markets

142. We have considered national television advertising as a relevant market based on the different nature of advertisers seeking a national audience rather than ones purchasing time for local markets. More recently, we identified a strategic group among the programming networks that consisted of ABC, NBC, CBS, and Fox. This assessment was based on findings that: (1) the relatively few local stations available with which to affiliate constituted a meaningful entry barrier into the strategic group; and (2) prime time viewership ratings were significantly higher for the strategic group networks than for other broadcast television networks. If our prior identification of this strategic group continues to be accurate today, the existence of this group likely restrains competition for national advertising among the broadcasters.

143. We seek comment on whether this analysis continues to be an accurate characterization of the national advertising market and the participants in the market. First, we request comment on whether the key participants in the national television advertising market should be defined more broadly to include broadcast TV networks outside the strategic group. If so, what are the factors that should be considered in identifying the members of the strategic group? Should the participants in the national television advertising market also include other outlets such as non-broadcast television networks (ESPN, CNN, etc.)? Cable networks and the other broadcast networks such as The WB and UPN have national coverage and carry national advertising, which may suggest they serve as substitutes from the perspective of at least some advertisers.

144. Second, regardless of whether we also include non-broadcast networks in the national television advertising market, we seek information on the extent to which national spot advertisements and/or syndicated programming are fungible with network television advertising from the perspective of advertisers. If group owners compete in the national advertising market, it would appear that increasing the 35% ownership cap could diminish competition by allowing broadcast networks to acquire additional stations, thereby reducing the effectiveness of non-network group owners in the national advertising market. We request market share data and analysis on this important point. Technology changes in advertising delivery may also allow the broadcast television networks to effectively provide national spot advertising. That is, a national network may deliver different advertisements targeted to different regions of the country simultaneously. We seek comment on this development and its relevance, if any, to competition in the national advertising market. Third, a recent study suggests that the national advertisers do not readily substitute between alternative media. We seek comment on this analysis.

145. The national TV ownership rule does not appear to have a direct effect on the number of competitors in the local advertising market. The rule affects primarily the total number of national households one group owner can reach, not the number within a single market. Of course, we recognize that the 35% limit could inhibit the participation of a group owner in a particular local TV market and thereby affect competition in that market. In particular, we seek comment on whether additional scale economies could be realized by group owners and whether the current rule prevents especially skilled management from entering additional local markets. We seek comment on this general issue, and whether limiting the size of group owners nationally can have an impact on competition in the local advertising market.

c. Innovation

146. We are also concerned with the impact that the national TV ownership rule may have on innovation in the media marketplace. Does our current rule promote or hinder innovation? Does a traditional competition analysis adequately capture the beneficial effects of innovation? What effect, if any, would a relaxed national TV ownership rule have on the ability of a broadcast network to develop innovative programming or services, or to effectuate the transition to digital television? Does the answer depend on whether the group owner plans to provide purely high definition television or standard definition television plus ancillary services? Would relaxation of the national TV ownership rule increase the ability and incentives of market participants (the large group owners in particular) to develop innovative technologies and/or new types of video programming?

3. Localism

147. The Commission has said in the past that a national TV ownership rule strengthens localism by creating a class of non-network station owners that can decide whether to preempt network programming in favor of programming that would better serve the needs and interests of that station's community. In Fox Television, the court affirmed that localism is a potentially relevant consideration in deciding whether to retain, modify, or eliminate the national TV ownership rule. Given this statement by the court and fact that the national ownership rule may have the most direct impact of our rules on the attainment of localism, our evaluation of the continued need for this rule will rely heavily on our findings regarding its effectiveness in promoting localism.

148. The production of local news and public affairs programming may represent one form of localism. We seek to understand whether the national TV ownership rule, by preserving a class of affiliates, may have the effect of increasing or decreasing the quantity and/or quality of local news and public affairs programming. We would be particularly interested in any clear correlation between the status of stations as affiliates or network-owned and the quantity of local news and public affairs produced by those stations. We request that commenters

submit evidence addressing the relative output of affiliates and networks in this regard and address the appropriate weight of such data in our evaluation of localism and the national ownership rule.

149. The national TV ownership rule may also promote localism by creating economic incentives for non-network station owners regarding the preemption of network-delivered programs with station-selected programming. Networks incur costs in producing or purchasing programming for distribution on their networks. Since the networks initially bear these costs, network-owned and operated stations may have a stronger economic incentive than affiliates, all else being equal, to distribute network programming rather than replacing it on a station-by-station basis in response to community interests. It is also possible that the local programming preference in a particular instance may be sufficiently strong that even a network-owned station would find it profitable to replace its own programming with alternative programming. Parties commenting on this issue are asked to address specifically the allocation of advertising revenues between networks and affiliates on preempted programming. We seek comment on these observations and on any other economic incentives affecting the preemption of network programming by local stations.

150. In addition, television stations are obligated to serve the needs and interests of their local communities. We ask commenters to address the extent to which affiliates and/or network-owned stations could be expected to preempt network programming when it is not in their economic interest to do so. According to testimony before Congress by the President and Chief Operating Officer of Viacom, Inc., CBS' owned-and-operated stations ''have complete freedom locally,'' even preempting primetime network programming to air, for example, an emergency weather newscast, a local telethon, and other events of local interest. If the principal category of such ''unprofitable'' preemption is breaking news or other emergency information, should we expect networks and affiliates to respond similarly with respect to such situations?

151. A key aspect of the argument that the national TV ownership rule promotes localism is that affiliates serve local needs more effectively than network station owners because affiliates are more likely to replace network programming with programming more suited to local needs. There are significant portions of the American public that already receive broadcast programming through stations owned and operated by broadcast networks. Is there evidence that consumers served by network-owned stations have either benefited or been harmed by the lack of a non-network owner as a check on network-provided programming?

152. It is also possible that localism may be furthered by the national TV ownership rule by preserving a sufficiently large class of network affiliates that collectively can influence network programming decisions. This may be the case where networks plan to air a particular program that a large percentage of its affiliates disfavor. Negotiations between a sufficiently large group of affiliates may cause the network to revise its programming decision. By contrast, if the national television ownership cap were raised or eliminated, a smaller group of affiliates raising the same concern might be less able to persuade the network to alter is programming plans. We ask commenters to address the frequency and efficacy of such discussions, to the extent they occur in practice, and the value of this form of localism compared with station-by-station preemption issues discussed.

153. We also seek comment on whether the national TV ownership rule continues to be necessary to preserve affiliate bargaining power regarding preemption. Would increasing the cap shift bargaining power to the networks such that ''local'' rights would be lost as a practical matter?

154. Separate from the selection of programming, our goal of promoting localism may be addressed through rules that promote the production of local news and public affairs programming. The 1984 Multiple Ownership Order relied on news ratings as an indicator of the quality of local news produced by group-owned stations versus that produced by stand-alone stations. The Commission reasoned that higher ratings indicated a greater responsiveness to local needs. Should we compare the quality of local news produced by network owned and operated stations and that of affiliates using ratings as a measure of quality? Are there alternative measures for this comparison?

4. Audience Measurement

155. The national TV ownership rule is calculated based on the number of television households a station can reach. The number of households reached nationwide is the sum of the number of households in each DMA in which a group owner owns a television station. The number of households in a DMA is halved for UHF stations. The national TV ownership rule is thus based on homes ''passed,'' not homes actually viewing the stations of a group owner. This ''potential audience'' measure is at odds with the way we calculate a national ownership audience reach limit for cable television. A home is attributed to a multi-system cable operator only if that MSO actually serves the home, not simply because it is available to that home. We seek comment on which measurement method is appropriate given the policy objectives of the national TV ownership rule, and the differences between cable and broadcast television in the ease with which the potential service can be accessed (switching off and on channels versus subscription and installation). Is the current method of measuring the broadcast audience appropriate because broadcast is a non-subscription service? Is there an alternative measurement method that would be preferable to either of these existing approaches?

B. Dual Network Rule

156. The dual network rule currently provides: ''A television broadcast station may affiliate with a person or entity that maintains two or more networks of television broadcast stations unless such dual or multiple networks are composed of two or more persons or entities that, on February 8, 1996, were 'networks' as defined in § 73.3613(a)(1) of the Commission's regulations (that is, ABC, CBS, Fox, and NBC).'' The rule in its current form permits broadcast networks to provide multiple program streams (program networks) simultaneously within local markets, and prohibits only a merger between or among these four networks.

157. The dual network rule was originally adopted over sixty years ago and flatly prohibited any entity from maintaining more than a single radio network. A few years later, the rule was extended to television networks. The Commission believed that an entity that operated more than one network might preclude new networks from developing and affiliating with desirable stations because those stations might already be tied up by the more powerful network entity. The Commission expressed concern that dual networking could give a network too much market power. The rule was also intended to remove barriers that would inhibit the development of new networks, as well to serve the Commission's more general diversity and competition goals.

158. After Congress, in the 1996 Act, directed the Commission to amend the rule, the Commission amended the rule for the first time since it was adopted to

permit a broadcast station to affiliate with a network organization that maintains more than one broadcast network unless the multiple network combination was created by a combination among ABC, CBS, Fox, or NBC, or a combination between one of these four networks and UPN or WB. In the Dual Network Order last year, the Commission further relaxed the rule to permit a ''top four'' network to merge with or acquire UPN or WB. The Commission found that: (1) competition in the national advertising market would not be harmed by this rule change; (2) greater vertical integration of the sort contemplated by this rule change was potentially an efficient, pro-competitive response to increasing competition in the video market; and (3) program diversity would not be harmed because the two combined networks would have strong economic incentives to diversify their program offerings. We ask for comment whether the relaxation of the dual network rule has had the effects that we foresaw in the Dual Network Order.

159. We ask for comment about whether the present dual network rule is necessary in the public interest as the result of competition. Does it promote the goals we set forth—diversity, competition, and localism? If the rule serves some of our purposes and disserves others, does the balance of its effects argue for keeping, revising, or abolishing the rule?

1. Diversity

a. Program Diversity

160. In the Dual Network Order, the Commission found that program diversity at the national level would not likely be harmed by the combination of an emerging network (*i.e.*, UPN or WB) with one of the four major networks. The Commission found it likely that their common owner would have strong incentives to produce a diverse schedule of programming for each set of local TV outlets in the same market. Has the Commission's expectation proved correct? We also seek comment on the effect that consolidation between and among top four networks likely would have on program diversity. We seek comment on whether, and if so how, the increased competition that television stations face from cable networks and other media affects the diversity of programming on all national program networks.

b. Viewpoint Diversity

161. With respect to the combination of two or more top four networks, we see several potential viewpoint diversity issues. The first is the loss of an independently owned and produced local newscast in cities where the two networks each own local television stations. We seek comment on the impact of such a development on viewpoint diversity. The local TV ownership rule could limit the degree to which one entity, including a network, could own multiple TV stations in one market, assuming we retain that rule. We seek comment on whether we should address the loss of an independent local newscast as a result of a combination of two or more of the four major networks in the dual network rule, in the local TV ownership rule, or in some alternative new rule.

162. The second possible viewpoint diversity concern relating to the elimination of the dual network rule is the potential loss of one or more independent national television news operations. The primary focus of networks' national news operations appears to be on the nightly newscasts by ABC, CBS, and NBC. We ask for comment, in light of other sources of news and current public affairs, whether the loss of one or more of those nightly newscasts as an independent source of news would significantly reduce sources of news and current affairs and thus injure the public interest. Should the fact that the national broadcast networks alone reach virtually all households in the country affect our analysis? Would a reduction in the number of independently-owned national television networks give the remaining networks undue power and influence, such as during national elections?

163. Third, in the Dual Network Order, we noted evidence in the record from Network Affiliated Stations Alliance (''NASA'') that eliminating the dual network prohibition against combinations of two of the top four major networks would increase the networks' economic leverage over their affiliates. We seek comment on how the combination of two top four networks would affect the balance of negotiating power between networks and affected affiliates. Commenters should identify with precision how any such leverage affects viewpoint diversity in terms of program selection. We also seek comment on whether combinations of major networks would affect the quantity or quality of diverse viewpoints on the merged company's owned and operated stations. Are there other factors or policy goals we should consider in determining whether to retain, modify or eliminate the dual network rule?

2. Competition

164. The Dual Network Order did not resolve whether the dual network rule should be eliminated. Some commenters pointed to new broadcast and non-broadcast competitors and argued that a merger of two major networks would not unduly affect the level of diversity and competition. Other commenters argued that major networks continue to have market power and relaxation of the rule would have an adverse impact on competition. We invite updates of these arguments. We also seek comment on whether the dual network rule promotes or retards innovation.

165. In the Dual Network Order, we found that the merger of an emerging network and a major network may benefit viewers and advertisers by lowering the risk associated with the creation of new network programming by giving one company a larger potential audience for the programming produced by the network. This spreads the fixed costs of program creation over a larger number of viewers, thereby lowering the per-viewer cost of producing the programming. If there are potential efficiencies of eliminating the rule for emerging networks, as we concluded last year, will comparable efficiencies accrue if two or more top four networks were permitted to merge?

166. In the Dual Network Order, we found that the combination of an emerging network and one of the four major networks would not harm the national television advertising market because the two networks would compete in different strategic groups. We seek comment on the effect of mergers among the four major networks on the program production market. If the four major networks constitute a strategic group within the national advertising market, do they also operate as a strategic group within the program production market? We seek comment on how competition in the program production market and program diversity would be affected, if at all, by a merger among two or more of the four major networks.

167. We are also concerned with the impact that the dual network rule may have on innovation in the media marketplace. Does our current rule promote innovation? Would relaxation of the dual network rule increase incentives to provide innovative broadcast programming or new broadcast-based technologies or services?

3. Localism

168. The Dual Network Order did not address localism as a policy goal *per se.* It did address localism in the context of a discussion of diversity. We seek to expand our understanding of the relationship between localism and the dual network rule. We invite comment as to whether the current rule promotes localism and, if so, whether, modification or elimination of the rule would have any effect. We also seek comment on whether combinations among major networks would affect the quantity or quality of local news provided by the merged company's owned and operated stations. Are there any other factors we should consider in determining whether to retain, modify, or eliminate the dual network rule?

VII. Administrative Matters

A. Procedural Provisions

1. Ex Parte Provisions

169. Because this proceeding involves broad public policy issues, the proceeding will be treated as ''permit but disclose'' for purposes of the Commission's *ex parte* rules. *See* generally 47 CFR 1.1200–1.1216. *Ex parte* presentations will be governed by the procedures set forth in section 1.1206 of the Commission's rules applicable to non-restricted proceedings. Should circumstances warrant, this proceeding or any related proceeding may be designated as restricted.

170. Parties making oral *ex parte* presentations are directed to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in § 1.1206(b) as well.

171. We urge persons submitting written *ex parte* presentations or summaries of oral *ex parte* presentations in this proceeding to use ECFS in accordance with the Commission rules. Parties using paper *ex parte* submissions must file an original and one copy with the Commission's Secretary, Marlene H. Dortch. As applicable, please follow the procedures set forth for sending your submission by mail, or for hand delivery of your submission to the Commission's filing location in downtown Washington, DC.

172. In addition, we request that parties provide two paper copies of each *ex parte* submission to Qualex International. We ask parties to serve one electronic copy via email, plus one paper copy of each *ex parte* submission, to (1) Linda Senecal, Industry Analysis Division, Media Bureau, Federal Communications Commission, 445 12th Street, SW., Room 2-C438, Washington, DC 20554, email *lsenecal@fcc.gov*; and (2) Mania Baghdadi, Industry Analysis Division, Media Bureau, Federal Communications Commission, 445 12th Street, SW., Room 2–C267, Washington, DC 20554, email *mbaghdad@fcc.gov.*

B. Initial Regulatory Flexibility Analysis

173. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (''*IRFA*'') of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *NPRM*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on this *NPRM*, and they should have a separate and distinct heading designating them as responses to the IRFA.

VIII. Initial Regulatory Flexibility Act

174. As required by the Regulatory Flexibility Act (''RFA''), *see* 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM*, provided in sections IV, V and VI of the item. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'').

A. Need for, and Objectives of, the Proposed Rules

175. Section 202(h) of the Telecommunications Act of 1996 (''1996 Act'') requires the Commission to review all of its broadcast ownership rules every two years commencing in 1998, and to determine whether any of these rules are necessary in the public interest as the result of competition. The 1996 Act also requires the Commission to repeal or modify any regulation it determines to be no longer in the public interest. At the time these ownership rules were adopted, there were fewer local media outlets and fewer types of media than there are today. The ownership rules in their current form therefore may need revision to ensure that they accurately reflect current media marketplace conditions. The goal of this proceeding is to solicit comment on the modification of the subject policies and rules.

176. In this *NPRM*, we seek comment on both ''local'' and ''national'' ownership rules. The local rules are the local TV multiple ownership rule and the radio/TV cross-ownership rule. The national ownership rules are the national TV multiple ownership rule and the dual network rule. These four rules are described in sections V and VI of this *NPRM*. Additionally, open proceedings concerning the newspaper/broadcast cross-ownership rule and the local radio ownership rule are incorporated into this proceeding.

177. Section 202(h) of the 1996 Telecommunications act directs the Commission to re-examine its broadcast ownership rules every two years and either repeal, retain or modify them. Additionally, two recent court decisions by the U.S. Court of Appeals for the District of Columbia Circuit state that section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules. In the Fox Television case, discussed in section II of the item, the court vacated the cable/broadcast cross-ownership rule and remanded for further consideration the Commission's decision in its 1998 biennial review to retain then national TV multiple ownership rule. In the Sinclair case, discussed in section II of the item, the same court invalidated the Commission's definition of ''voices'' under the local TV ownership rule, stating the Commission had failed to justify its decision to include only TV broadcast stations as voices.

178. In light of the mandate in section 202(h) and these recent court decisions, the Commission seeks comment from parties concerning ownership rules discussed in the *NPRM*. The Commission believes that a broad range of comments must be received to ensure we fulfill our mandate to further the public interest, convenience and necessity.

179. We are required under the Regulatory Flexibility Act to demonstrate a flexible and responsive awareness of the interests of small business entities that are subject to the rules under review in this *NPRM*. Accordingly, we solicit comment from all small business entities, including minority-owned and women-owned small businesses. We especially solicit

comment on whether, and if so, how, the particular interests of these small businesses may be affected by the rules.

B. Legal Basis

180. This *NPRM* is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and section 202(h) of the Telecommunications Act of 1996.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

181. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by any proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental entity'' under section 3 of the Small Business Act. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

182. In this context, the application of the statutory definition to television stations is of concern. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over inclusive to this extent.

183. *Television Broadcasting*. The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business. Television broadcasting consists of establishments primarily engaged in broadcasting images together with sound, including the production or transmission of visual programming which is broadcast to the public on a predetermined schedule. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce programming in their own studios. Separate establishments primarily engaged in producing programming are classified under other NAICS numbers.

184. According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database on August 22, 2002, about 870 (70%) of 1,250 commercial television broadcast stations have revenues of $12 million or less. We note, however, that under SBA's definition, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figure on which it is based does not include or aggregate revenues from non-television affiliated companies.

185. *Radio Broadcasting*. The SBA defines a radio station that has $6 million or less in annual receipts as a small business. According to Commission staff review of BIA Publications Inc. Master Access Radio Analyzer Database on August 22, 2002, about 10,800 (96%) of 11,320 commercial radio stations have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules.

186. *Cable and Other Program Distribution*. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite (''DBS'') services, home satellite dish (''HSD'') services, multipoint distribution services (''MDS''), multichannel multipoint distribution service (''MMDS''), Instructional Television Fixed Service (''ITFS''), local multipoint distribution service (''LMDS''), satellite master antenna television (''SMATV'') systems, and open video systems (''OVS''). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We address each service individually to provide a more precise estimate of small entities.

187. *Cable Operators*. The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions adopted in this *NPRM*.

188. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

189. *DBS Service*. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of

specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

190. *Home Satellite Dish (''HSD'') Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

191. *Multipoint Distribution Service (''MDS''), Multichannel Multipoint Distribution Service (''MMDS''), Instructional Television Fixed Service (''ITFS'') and Local Multipoint Distribution Service (''LMDS'').* MMDS systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

192. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had an annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, for purposes of the IRFA, we find that there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

193. The SBA definition of small entities for cable and other program distribution services, which includes such companies generating $12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licenses. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

194. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS provides as defined by the SBA and the Commission's auction rules.

195. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

196. *Satellite Master Antenna Television (''SMATV'') Systems.* The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December, 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July, 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

197. *Open Video Systems (''OVS'').* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

198. *Daily newspapers*. The SBA defines a newspaper publisher with less than 500 employees as a small business. According to the 1997 Economic Census, 8,620 of 8758 newspaper publishers had less than 500 employees. The data does not distinguish between newspaper publishers that publish daily and those that publish less frequently, and the latter are more likely to be small businesses than the former because of the greater expense to publish daily. The newspaper/broadcast cross-ownership rule applies only to daily newspapers. It is likely that not all of the 8,620 small newspaper publishers are affected by the current rule.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

199. We anticipate that none of the proposals presented in the *NPRM* will result in an increase to the reporting and recordkeeping requirements of broadcast stations, newspapers, or cable television stations. However, one alternative available to the Commission in this *NPRM* is retention of the current rules.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

200. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

201. We are directed under law to consider alternatives, including alternatives not explicitly listed. This *NPRM* invites comment on a number of alternatives to retain, modify, or eliminate the individual ownership rules. The Commission will also consider additional significant alternatives developed in the record.

202. In this context, we highlight certain aspects of this *NPRM* in which we have asked commenters to discuss alternative means of achieving our goals. Parties' discussions of alternatives that are in their submitted comments will be fully considered in our evaluation of whether to retain, modify or eliminate our media ownership rules.

203. Our local ownership rules include the newspaper/broadcast cross-ownership rule, the radio/TV cross-ownership rule, the local radio ownership rule, and the local TV multiple ownership rule. These rules are interrelated. Each is intended to foster competition and diversity in the local media marketplace. One approach under consideration is to consider these rules collectively and thus adopt a single rule that would foster diversity, competition, and localism. An alternative option is to retain the current regulatory scheme, in which we apply individual, media-specific local ownership rules. We ask for comment on how best to choose among these or other alternatives.

204. We also ask about alternative approaches to identifying and weighting ''voices'' if the Commission adopts a new ''voice'' test. Should the Commission develop a new ''voice'' test, according weights to different outlet types, or considering factors such as audience reach, ownership structure, percentage of programming or print content devoted to local news, and/or consumer use patterns? Should the Commission consider an alternative that would count, or not count, certain types of media outlets as a ''voice''?

205. In this *NPRM*, the Commission explores the underpinnings of three principles underlying the regulation of the broadcast industry, namely diversity, competition and localism. These principles are of particular import to small entities. Thus, we seek comment to promote on the general advantages and disadvantages of relying on our current ownership rules to promote the public interest versus developing a single local ownership rule or conducting a case-by-case analysis.

206. In addition to seeking to foster the policy goals discussed, the Commission has historically used the ownership rules to foster ownership by diverse groups, such as minorities, women and small businesses. In the context of this comprehensive review of our ownership rules, we invite comment on whether we should consider such diverse ownership as a goal in this proceeding. If so, how should we accommodate or seek to foster that goal? In addition, we invite comment as to our legal authority to adopt measures to foster that goal.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

IX. Ordering Clauses

207. Pursuant to sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and section 202(h) of the Telecommunications Act of 1996, this *NPRM*.

208. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *NPRM,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Television broadcasting.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–27311 Filed 10–25–02; 8:45 am]

BILLING CODE 6412–01–P

Notices

Federal Register

Vol. 67, No. 208

Monday, October 28, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Renewal of Advisory Committee on Actuarial Examinations

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Renewal of Advisory Committee.

SUMMARY: The Joint Board for the Enrollment of Actuaries announces the renewal of the Advisory Committee on Actuarial Examinations.

FOR FURTHER INFORMATION CONTACT: Gloria Walker, Management/Program Analyst, 202–694–1854.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Joint Board on examinations in actuarial mathematics and methodology. The Joint Board administers such examinations in discharging its statutory mandate to enroll individuals who wish to perform actuarial services with respect to pension plans subject to the Employee Retirement Income Security Act of 1974. The Committee's advisory functions will include, but will not necessarily be limited to: (1) Considering areas of actuarial knowledge that should be treated on the examinations; (2) developing examination questions; (3) recommending proposed examinations and pass marks; and (4), as requested by the Joint Board, making recommendations relative to the examination program.

Dated: October 11, 2002.

Paulette Tino,

Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc. 02–27044 Filed 10–25–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. ST–02–05]

Microbiological Data Program; Public Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The purpose of this notice is to notify all interested persons that the USDA Agricultural Marketing Service (AMS) will hold a public meeting to discuss the Microbiological Data Program (MDP). Specifically, AMS will discuss the current status of the program and invite comment and input regarding the MDP activities to date. This notice also sets forth the schedule and proposed agenda for the meeting.

DATES: The public meeting will be held on Wednesday, November 20, 2002, from 1 to 4 p.m.

ADDRESSES: The public meeting will be held at the Hilton Garden Inn, Georgetown meeting room, 815–14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Martha Lamont, Monitoring Programs Office, Science and Technology Programs, Agricultural Marketing Service, United States Department of Agriculture, 8609 Sudley Road, Manassas, Virginia, 20110–8411. Telephone number (703) 330–2300, Ext 17 or fax (703) 369–0678.

SUPPLEMENTARY INFORMATION: In the past several years the number of foodborne illness associated with domestic and imported fresh fruits and vegetables has increased. Some microorganisms once thought under control may be adapting to their environments, may be developing resistance to conventional food processing operations, and may be re-emerging with increased pathogenicity. To respond to these concerns, Congress authorized an appropriation of $6.234 million for FY 2002 to fund a microbiological monitoring program for foodborne pathogens and indicator organisms on domestic and imported fruits and vegetables. The program is designed to collect reliable data and develop national estimates of bacterial contamination with regard to selected produce. The MDP is a voluntary data gathering program and not a regulatory or enforcement program. The Federal agencies; Food and Drug Administration, Centers of Disease Control and Prevention, USDA's National Agricultural Statistical Service, as well as 10 State Departments of Agriculture, industry and academia have provided assistance and information in formulating program policy and operating procedures. The program is being conducted under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*).

AMS is hereby giving notice of a public meeting, scheduled for Wednesday, November 20, 2002, in order to keep all interested persons advised of the current status of the program and invite comment and input regarding the MDP activities to date. The public meeting will begin at 1 p.m. and is scheduled to end at 4 p.m. It will be held at the Hilton Garden Inn, Georgetown meeting room, 815–14th Street, NW., Washington, DC 20005.

Those parties who wish to speak at the meeting should register on or before November 13, 2002 to speak, please e-mail *Martha.Lamont@USDA.gov,* or send a fax to Martha Lamont at (703) 330–2300, Ext 17. Registrants should include their name, address, and daytime telephone number. Depending on the number of registered speakers, time limits may be imposed on speakers, and speakers who have registered in advance will be given priority if time is limited.

The proposed agenda for the meeting will include discussions of: (1) MDP overview and current status, (2) MDP sampling and testing methodology, (3) MDP Annual Summary Calendar Year 2002, and (4) recommendations and concerns.

Registration upon arrival is necessary for all participants, including those who have registered to speak in advance. Speakers should provide one original and two copies of their presentation at registration. A registration desk will be located outside the meeting room. If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.** The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting.

Dated: October 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–27306 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Mineral County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Lolo National Forest's Mineral County Resource Advisory Committee will meet on November 12 at 6 p.m. until 8 p.m. in Superior, Montana for a business meeting. The meeting is open to the public.

DATES: November 12, 2002.

ADDRESSES: The meeting will be held at the Mineral County Courthouse, 300 River Street, Superior, MT 59872.

FOR FURTHER INFORMATION CONTACT: Robert Harper, Designated Forest Official (DFO), District Ranger, Superior District, Lolo National Forest at (406) 822–4233.

SUPPLEMENTARY INFORMATION: Agenda topics for this meeting include establishing operating guidelines, and discussion about funding projects. If the meeting location is changed, notice will be posted in local newspapers, including the Mineral Independent and the Missoulian.

Dated: October 17, 2002.

Robert Harper,

Designated Federal Official, District Ranger, Superior Ranger District.

[FR Doc. 02–27313 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Service Strategic Plan (2003 Update)

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Government Performance and Results Act of 1993, the Forest Service will be updating its strategic plan over the next twelve months. The purpose of this plan is to outline long-term goals and objectives that will help guide the agency's current actions and future plans. In the past, the Forest Service has found that public comment has been helpful in developing the strategic plan and its subsequent updates. This notice, therefore, announces the opportunity for the public to review the agency's current strategic plan and to recommend changes that should be included in the draft 2003 update.

DATES: Comments must be received, in writing, on or before December 30, 2002.

ADDRESSES: Send written comments for the draft 2003 update of the strategic plan to the Director, Strategic Planning and Resource Assessment Staff, via U.S. Postal Service to Forest Service, USDA, Mail Stop 1129, 1400 Independence Ave., SW, Washington, DC 20250–1129; via email to *spra@fs.fed.us;* or via facsimile to (703) 605–4199. The public may inspect comments received on this notice in the office of the Director of Strategic Planning and Resource Assessment, Sixth Floor, Rosslyn Plaza, Building E, 1621 North Kent Street, Arlington, VA 22209. Persons wishing to inspect the comments are encouraged to call ahead at (703) 605–4488 to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Nancy Osborne, Strategic Planning and Resource Assessment Staff, (703) 605–4488; or via email at *spra@fs.fed.us*. Additional information concerning the strategic plan, including the current plan, may be obtained on the Internet at *http://www.fs.fed.us/plan*.

SUPPLEMENTARY INFORMATION: The intent of the strategic plan is to outline long-term goals and objectives that will help guide the agency's current actions and future plans. Management strategies are identified under each objective that provide key approaches to be used to achieve the stated goals and objectives. The draft 2003 update of the strategic plan will be developed using the Montreal Process Criteria and Indicators for forest conservation and sustainable management as a framework for identifying goals, objectives, and trend indicators focused on the agency mission of sustainable resource management. Three goals are envisioned for the draft 2003 update of the strategic plan: (1) Sustaining ecosystem health, diversity, and productivity of national forests and grasslands, (2) providing the American people with a sustainable flow of goods and services, and (3) maintaining organizational capacity to deliver effective public service.

More information on the Montreal Process Criteria and Indicators and on current trends in the indicators for the United States is available at *http://www2.srs.fs.fed.us/2003/2003.htm,* the Web site for the draft National Report on Sustainable Forests. In addition, it is anticipated that the 2003 update of the Forest Service Strategic Plan will be available for public comment in spring 2003.

Dated: October 18, 2002.

Sally D. Collins,

Associate Chief.

[FR Doc. 02–27333 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Natural Resources Conservation Service (NRCS) will hold a Farm Bill 2002 National Technical Service Provider Summit entitled ''Expanding the Capabilities of Conservation Service on Private Lands.'' The purpose of this event is to initiate a Departmental dialogue with potential technical service providers. The Summit is open to the public.

DATES: The Summit will convene Thursday, November 7, 2002. Registration will start at 8 a.m., followed by a panel session. The afternoon listening session will continue until 4 p.m., with opportunities for statements on ways to successfully implement a Technical Service Provider Process.

ADDRESSES: The Summit will be held at the Jefferson Auditorium of the Department of Agriculture's (USDA) South Building, 1400 Independence Ave., SW., Washington, DC. Participants should enter the building through the 5th wing entrance of the South Building, located on the corner of Independence Avenue and 14th Street. Participants should note that in order to access the building, they must bring valid photo identification and allow for time to be checked in at the security station. Weapons of any type, including protective sprays, are prohibited in the building. Requests to make statements should be sent to Marilou Flores, USDA/NRCS Technical Service Provider Group. Speakers will be limited to three minutes. Written statements will also be accepted, and should be addressed to Melissa M. Hammond, Group Leader, Technical Service Provider Group, USDA/Natural Resources Conservation Service, Washington, DC. Elements for which

potential private and public technical service providers may provide statements include:

- Technical Service Provider Process.
- Payment Process.
- Payment Rates.
- Certification.
- Decertification.
- Quality Assurance Process.
- Training.
- Liability.
- Competition.

FOR FURTHER INFORMATION CONTACT: Marilou Flores, Management Analyst, USDA/NRCS Technical Service Provider Group; telephone: (202) 720–0427; fax: (202) 720–3052; e-mail: *marilou.flores@usda.gov.*

SUPPLEMENTARY INFORMATION: This summit will also be broadcast nationally as a live satellite telecast available through satellite downlink and web streaming. Additional information about this summit that occurs after this **Federal Register** notice is published, may be found on the World Wide Web at *http://www.nrcs.usda.gov/.*

Information on Services for Individuals With Disabilities: For information on facilities, or services for individuals with disabilities, or to request special assistance at the Summit, contact Marilou Flores.

USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Statutes enforced by USDA also prohibit discrimination on the basis of political beliefs and marital or family status (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication or program information (Braille, large print, audio tape, etc.) should contact USDA's Target Center at (202) 720–2000 (voice and TDD).

To file a complaint of discrimination to USDA, write to the Director, Office of Civil Rights, Room 326–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410; or call (202) 720–5964 (voice and TDD). The USDA is an equal opportunity provider and employer.

Signed in Washington, DC on October 21, 2002.

Thomas A. Weber,

Associate Chief, Natural Resources Conservation Service.

[FR Doc. 02–27298 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and partial rescission of fourth antidumping duty administrative review.

SUMMARY: On January 4, 2002, the Department of Commerce published the preliminary results, partial rescission and postponement of the fourth antidumping duty administrative review of the antidumping duty order on brake rotors from the People's Republic of China. *See Brake Rotors from the People's Republic of China: Preliminary Results, Preliminary Partial Rescission, and Postponement of Final Results of the Fourth Antidumping Duty Administrative Review*, 67 FR 557 (January 4, 2002) (*Preliminary Results*). This administrative review examines six PRC companies (i.e., one exporter whose entries are all subject to the antidumping duty order and five exporters included in three exporter/producer combinations for which only certain entries are subject to the antidumping duty order) (*see* ''Background'' section below for further discussion). The period of review is April 1, 2000, through March 31, 2001. We gave interested parties an opportunity to comment on our preliminary results.

Based on the use of additional publicly available information and the comments received from the interested parties, we have made two changes to the margin calculation for the sole respondent in the administrative review for which we calculated an antidumping duty margin. The final weighted-average dumping margin for the reviewed firm in the administrative review is listed below in the section entitled ''Final Results of Administrative Review.''

EFFECTIVE DATE: October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–1280, 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's'') regulations are to 19 CFR Part 351 (2001).

Background

On January 4, 2002, the Department published in the **Federal Register** the preliminary results, preliminary partial rescission, and postponement of final results of the fourth antidumping duty administrative review of the antidumping duty order on brake rotors from the People's Republic of China (''PRC'') (67 FR 557).

On January 14, 2002, the petitioner[1] requested the Department to reconsider its decision not to conduct verification of Qingdao Gren (Group) Co. (''Gren'') based on the argument that it submitted a timely request for that company to be verified and that there was good cause to verify Gren's data based on the concerns raised in its letter. On January 24, 2002, we informed the petitioner's counsel that it would not be possible to conduction verification of Gren's submitted data in this review because (1) a verification of Gren's data was not statutorily required; (2) the petitioner did not sufficiently demonstrate that good cause existed for verifying Gren's data; and (3) in the absence of good cause, the Department's team assigned to this case did not have the resources to verify any additional companies other than those companies it had already selected for verification (*see* Memorandum dated January 24, 2002, from Irene Darzenta Tzafolias, Program Manager, to the File).

On March 2, 2002, the Department provided a verification outline to certain respondents[2] selected for verification

[1] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

[2] The respondents in this review are Gren and the following three exporters/producer combinations (which are excluded from the order on brake rotors only with respect to brake rotors sold through those combinations): (1) China National Automobile Industry Import & Export Corporation (''CAIEC'') or Laizhou CAPCO Machinery Co., Ltd. (''Laizhou CAPCO'')/Laizhou CAPCO; (2) Shenyang Honbase Machinery Co., Ltd. (''Shenyang Honbase'') or Laizhou Luyuan Automobile Fittings Co., Ltd. (''Laizhou Luyuan'')/Shenyang Honbase or Laizhou Luyuan; and (3) China National Machinery and Equipment Import & Export (Xinjiang) Co., Ltd. (''Xinjiang'')/Zibo Botai Manufacturing Co., Ltd. (''Zibo'').

Continued

(*i.e.*, four of the five exporters included in the three exporter/producer combinations and as discussed in the *Preliminary Results* at 67 FR 558). On March 7, 2002, the petitioner provided verification comments. From March 14 through April 2, 2002, the Department conducted its verification of data obtained for certain U.S. entries of brake rotors from four of the five exporters included in the three exporter/producer combinations, in accordance with 19 CFR 351.307.

On April 16, 2002, the Department placed on the record certain publicly available information for consideration in the final results (*see* April 16, 2002, letter with attachment from Katherine Johnson, Acting Program Manager, to each interested party).

On April 26, and May 2, 2002, the Department issued its verification reports. The petitioner submitted its case brief on June 14, 2002. The respondents collectively submitted their rebuttal brief on June 21, 2002.

The Department has conducted these reviews in accordance with section 751 of the Act.

Scope of the Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), we have determined that, during the period of review (''POR''), the exporters which are part of the three exporter/producer combinations which received zero rates in the less-than-fair-value (''LTFV'') investigation did not make shipments of subject merchandise to the United States during the POR. Specifically, we have determined that during the POR, (1) neither CAIEC nor Laizhou CAPCO exported brake rotors to the United States that were manufactured by producers other than Laizhou CAPCO; (2) neither Shenyang Honbase nor Laizhou Luyuan exported brake rotors to the United States that were manufactured by producers other than Shenyang Honbase or Laizhou Luyuan; and (3) Xinjiang did not export brake rotors to the United States that were manufactured by producers other than Zibo.

In order to make this determination, we first examined POR-subject merchandise shipment data furnished by the Customs Service by performing a data query. Because the data from our initial query was voluminous, we randomly selected 25 entries (*i.e.*, five entries per company) from the data query results for further examination by the Customs Service (*see* Memorandum dated October 2, 2001, from Brian C. Smith, Team Leader, to the File, titled, ''Request for Assistance: Shipments of Brake Rotors from the People's Republic of China Manufactured and/or Exported By Five PRC Companies During the Period April 1, 2000, Through March 31, 2001'').

Specifically, we requested the Customs Service to examine further the documentation filed at the U.S. port for each of those selected entries made by the exporters at issue to determine the manufacturer of the merchandise. To check further the accuracy of the data for those entries, we conducted verification of the entry data selected for four of the five exporters included in the three exporter/producer combinations. At verification, we examined all documentation (*i.e.*, bills of lading, invoices, payment documentation, production orders, etc.) pertaining to the entry data for those companies. *See* verification reports for CAIEC and Laizhou CAPCO dated April 26, 2002, and verification reports for Laizhou Luyuan and Shenyang Honbase dated May 2, 2002, for additional discussion.

Therefore, based on the data contained on the record for all 25 entries from our data query results and our findings with respect to these and other entries selected at verification, we found no evidence that any of the exporter/producer combinations which are the subject of this administrative review made shipments of subject merchandise during the POR. (*See* ''Issues and Decision Memorandum'' from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated October 21, 2002 (Comments 1 through 4 and 6).) Therefore, we are rescinding this review with respect to CAIEC, Laizhou CAPCO, Shenyang Honbase, Laizhou Luyuan, and Xinjiang.

Since the preliminary results, we have also examined whether any exporter/producer combinations in this review underwent changes in ownership and, if so, whether there are changed circumstances which would affect their order exclusion status. As a result of verification findings, although we did find that there had been changes in ownership since the LTFV investigation with respect to Laizhou Luyuan, Laizhou CAPCO, and CAIEC, we found no evidence that the change in ownership in each of these companies affects their exclusion status.

With respect to Laizhou Luyuan, another company purchased a significant portion of it after the LTFV investigation. At verification, we thoroughly examined the facts behind that other company's investment in Laizhou Luyuan, and whether it was exporting through Laizhou Luyuan brake rotors to the U.S. market.

In addition, in order to determine whether these two companies should be treated as one entity, we examined the extent to which the export operations of Laizhou Luyuan and this other company were intertwined and whether this

As stated in the *Preliminary Results*, we selected CAIEC, Laizhou CAPCO, Shenyang Honbase, Laizhou Luyuan, and a company related to Laizhou Luyuan for verification. We did not select Gren for verification because we did not find good cause had been demonstrated with respect to this company and verification of this company was not statutorily required (*see* 67 FR at 558).

relationship has significant potential for the manipulation of pricing, export, and production decisions pertaining to the subject merchandise. Based on our verification findings, we find that the export activities of Laizhou Luyuan and the company that purchased a significant portion of Laizhou Luyuan are sufficiently separate even though common ownership does exist. Specifically, based on our verification findings, we determine that Laizhou Luyuan has not significantly changed its (1) management, (2) production facilities, (3) supplier relationships, or (4) customer base as a result of its purchase by the other company (*see* Laizhou Luyuan's April 26, 2002, verification report). Thus, we find that the export operations of Laizhou Luyuan and the other company are sufficiently separate from one another such that there is no significant potential for manipulation of pricing, export, or production decisions.

Finally, after examining both companies' records at verification we found no instance that the other company is exporting Laizhou Luyuan-made brake rotors to the U.S. market or that Laizhou Luyuan is exporting brake rotors sourced through the other company.

Analysis of Comments Received

All issues raised in the case briefs are addressed in the Decision Memo, which is hereby adopted by this notice. A list of the issues raised, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

After the use of additional publicly available information and the comments received from the interested parties, we made two changes to Gren's margin calculation.

1. To value selling, general, and administrative expenses, factory overhead and profit, we used the 1998 financial data of Jayaswals Neco Limited, the 1998–1999 financial data of Rico Auto Industries Limited, and the 2000–2001 financial data of Kalyani Brakes Limited.
2. We used the updated value from the International Trade Administration website to value skilled, unskilled and packing labor.

Final Results of Review

We determine that the following weighted-average margin percentage exists for the period April 1, 2000, through March 31, 2001:

Exporter	Margin (percent)
Qingdao Gren (Group) Co.	0.02 (de minimis)

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific *ad valorem* duty assessment rates for merchandise subject to this review. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR from Gren for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries during the review period. For entries made by PRC companies for which the Department has rescinded the administrative review (*i.e.*, the exporter/producer combinations listed in the ''Background'' section of this notice), the Customs Service shall continue not to assess *ad valorem* duties on those entries made by those exporter/producer combinations.

Cash Deposit Requirements

The following deposit rates shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Gren will be the rate indicated above; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding, but for whom the Department has rescinded the review or of whom the review was not requested for this POR will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for all other PRC exporters will continue to be 43.32 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: October 21, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix--Issues in Decision Memo

Comments

1. Whether the Sampling Technique and Method Used for Collecting Data in this Review Violated the Petitioners' Rights of Due Process
2. Whether to Reverse the Preliminary Results With Respect to the Exporter/Producer Combinations
3. Whether the Exporter/Producer Combinations Excluded from the Order Violated the Exclusion Conditions Based on Examination of Selected U.S. Brake Rotor Entries during the Period of Review
4. Whether Two Companies Failed the Verification Process Based on the Verification Findings and Documents Obtained From Verification
5. Whether Certain Data Obtained from Verification Were Illegible
6. Whether the Change in Ownership Warrants Assigning Laizhou Luyuan the PRC-Wide Rate

7. Whether We Should Have Conducted Verification of Gren's Data

[FR Doc. 02–27393 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Partial Rescisson of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of partial rescission of the antidumping duty new shipper review of fresh garlic from the People's Republic of China.

SUMMARY: On July 31, 2002, the Department of Commerce published the preliminary results of the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China. The review covers Jinan Yipin Corporation, Ltd., and Shandong Heze International Trade and Developing Company. The period of review is November 1, 2000, through October 31, 2001. For the reasons discussed below, we are rescinding the review of Shandong Heze International Trade and Developing Company.[1]

EFFECTIVE DATE: October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Ellman or Mark Ross, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4852 and (202) 482–4794, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2001).

[1] We are also conducting a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China for Jinan Yipin Corporation, Ltd. On October 22, 2002, we issued a notice extending the final results of that new shipper review.

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheading 0703.20.0010, 0703.20.0020 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Background

On July 31, 2002, we published in the **Federal Register** the notice of preliminary results of the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC), in which we indicated our intent to rescind the review of Shandong Heze International Trade and Developing Company (Shandong Heze) based on lack of evidence supporting Shandong Heze's entitlement to a separate rate from the PRC-wide entity. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review and Intent to Rescind in Part,* 67 FR 49669 (July 31, 2002); see also *Shandong Heze International Trade and Developing Company—Separate Rates Analysis and Deficient Submissions Memorandum,* dated July 24, 2002, available in the Central Records Units (CRU), Room B–099 of the main Department of Commerce Building. In the notice we invited interested parties to comment on our preliminary results.

On August 15, 2002, Shandong Heze filed a case brief addressing issues raised in the Department's preliminary results of review, and the petitioner filed rebuttal comments on August 21, 2002. Subsequent to our receipt of the case brief, we identified an additional deficiency in Shandong Heze's reporting and, on September 19, 2002, we released for comment the draft decision memorandum in which we identified the deficiency. See *Shandong Heze International Trade and Developing Company—Recission of New Shipper Review Due to Lack of Required Certification,* dated September 19, 2002, available in CRU. We did not receive any comments from either party by the due date we established. Therefore, the analysis we proposed in that memorandum remains unchanged.

Rescission of Review

The Department's regulations at 19 CFR 351.214(b)(2)(ii) state that, if the company requesting the review is the exporter but not the producer of the subject merchandise, then the request from this company must contain: (1) A certification that the company did not export subject merchandise to the United States during the period of investigation (POI), and (2) a certification from the person or company that produced or supplied the subject merchandise to the company requesting the review that the producer or supplier did not export the subject merchandise to the United States during the POI. Shandong Heze did not supply the Department with the certifications required in a new shipper review under 351.214(b)(2)(ii)(B) of the Department's regulations. As discussed above, the Department released to the parties for comment a draft decision memorandum in which it identified the deficiency and, in the memorandum, a prompt rescission of the review of Shandong Heze was recommended. As indicated above, we did not receive any comments on this issue. Therefore, we find it appropriate to rescind the new shipper review of Shandong Heze based on its failure, despite multiple opportunities, to provide the proper certifications pursuant to 19 CFR 351.214(b)(2)(ii).

Analysis of Comments Received

Because the Department is rescinding this review based on Shandong Heze's failure to provide the proper certifications, we have not addressed

the other, unrelated arguments offered by the parties after issuance of the preliminary results of the new shipper review.

Notification

Bonding is no longer permitted to fulfill security requirements for shipments from Shandong Heze of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement, pursuant to 19 CFR 351.402(f)(3), could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (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/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Tariff Act of 1930, as amended.

Dated: October 22, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–27395 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the final results of antidumping duty new shipper review.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China until no later than November 26, 2002. The new shipper review covers one exporter, Jinan Yipin Corporation Ltd.[1] The period of review is November 1, 2000, through October 31, 2001. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5047.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act and all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2002).

Background

On July 24, 2002, the Department issued the preliminary results of the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China. See *Fresh Garlic from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty New Shipper Review and Intent to Rescind in Part,* 67 FR 49669 (July 31, 2002). We invited parties to comment on our preliminary results. We received comments from the petitioners and the new shipper, Jinan Yipin Corporation, Ltd. The final results for this review are currently due October 22, 2002.

Extension of Time Limit for Final Results of New Shipper Review

Section 751(a)(1)(B)(iv) of the Act provides that the Department will issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. If the Department determines that a new shipper review is extraordinarily complicated, however, section 751(a)(1)(B)(iv) of the Act allows the Department to extend the deadline for the final results to up to 150 days after the date on which the preliminary results of the new shipper review were issued. The Department has determined that this case is extraordinarily complicated, and the final results of this new shipper review cannot be completed within 90 days from the date on which the preliminary results were issued. The Department finds that this new shipper review is extraordinarily complicated because the comments we received present a number of complex factual and legal questions about the assignment of antidumping duty margins.

Therefore, in accordance with section 751(a)(1)(B)(iv) of the Act and 19 CFR 351.214(i)(3), the Department is extending the time limit for the completion of the final results by thirty-five days. The final results will be due no later than November 26, 2002.

Dated: October 22, 2002.

Richard W. Moreland,

Deputy Assistant Secretary for AD/CVD Enforcement I.

[FR Doc. 02–27396 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–DS–P

[1] We were also conducting a new shipper review of the antidumping order on fresh garlic from the People's Republic of China for Shandong Heze International Trade and Developing Company (Shandong Heze). On October 22, 2002, we issued a notice rescinding that new shipper review.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Certain Tin Mill Products From Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances antidumping duty review.

SUMMARY: In accordance with 19 CFR 351.216(b), Nippon Steel Corporation (''Nippon''), an exporter and manufacturer of the subject merchandise, filed a request for a changed circumstances review of the antidumping order on certain tin mill products from Japan with respect to certain laminated tin-free steel, as described below. In Nippon's request, Weirton Steel Corporation, United States Steel Corporation, Bethlehem Steel Corporation, USS–Posco Industries, and National Steel Corporation stated that they do not object to the exclusion of this product

from the order. In response to the apparent lack of interest in this product from the domestic industry, the Department of Commerce (''the Department'') is initiating a changed circumstances review with respect to this request for all future entries for consumption of tin-free laminated steel, as described below.

EFFECTIVE DATE: October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1394.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (''the Act''), by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351 (2002).

SUPPLEMENTARY INFORMATION:

Background

On August 28, 2000, the Department published in the **Federal Register** the antidumping duty order on certain tin mill products from Japan. *See Notice of Antidumping Duty Order: Certain Tin Mill Products from Japan* 65 FR 52067 (August 28, 2000). On September 6, 2002, Nippon, an exporter and manufacturer of the subject merchandise requested that the Department revoke in part the antidumping duty order on certain tin mill products from Japan. Specifically, Nippon requested that the Department revoke the order with respect to imports meeting the following specifications: Tin-free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains no more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (BisPhenol—A Di-glycidyl Ether), 1 mg/kg BFDGE (BisPhenol—F Di-glycidyl Ether), and 3 mg/kg BPA (BisPhenol—A).

Nippon included letters from Weirton Steel Corporation, United States

Steel Corporation, Bethlehem Steel Corporation, USS-Posco Industries, and

National Steel Corporation, in its request for the changed circumstances review stating their support for the exclusion of the tin-free laminated steel, as described above. However, the Department does not have information on the record of this changed circumstances review that the aforementioned domestic tin mill producers account for substantially all, or at least 85 percent, of the production of the domestic like product. *See Oil Country Tubular Goods From Mexico: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 14213 (March 24, 1999). Additionally, the Department has no information on the record that the other known domestic producers of tin mill products, Wheeling-Pittsburgh Steel Corporation, and Ohio Coatings Corporation, have no interest in maintaining the antidumping duty order with respect to certain laminated tin-free steel described in Nippon's request. Therefore, we are not combining this initiation with a preliminary determination, which is our normal practice under section 351.221(c)(3)(ii). This notice of initiation will accord all interested parties an opportunity to address this proposed exclusion.

Scope of Review

The products covered by this antidumping order are tin mill flat-rolled products that are coated or plated with tin, chromium or chromium oxides. Flat-rolled steel products coated with tin are known as tin plate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such and scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or double-reduced), and whether or not coated with a plastic material. All products that meet the written physical description are within the scope of this order unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

—Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (#10%) or 0.251 mm (90 pound base box) (#10%) or 0.255 mm (#10%) with 770 mm (minimum width) (#1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (# 1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 1/2 anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m^2; with a chrome oxide coating restricted to 6 to 25 mg/m^2 with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m^2 as type DOS, or 3.5 to 6.5 mg/m^2 as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).

—Single reduced electrolytically chromium- or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.

—Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.

—Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur, 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/m^2, with a chromium oxide layer of 5–30 mg/m^2, with a tensile strength of 260–440 N/mm^2, with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (KG)10.0 minimum, Br (KG) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.

—Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of 3/4

pound (0.000045 inch) and 1 pound (0.00006 inch).

—Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of 1/4 inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m^2 and chromium oxide of 10 mg/m^2, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of # 1/8 inch, with a thickness tolerance of #0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg) with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of : (1) CAT 4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT 5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. in., with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch x 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch x 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch x 34.125 inch scroll cut dimension.

—Tin-free steel coated with a metallic chromium layer between 100–200 mg/m^2 and a chromium oxide layer between 5–30 mg/m^2; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density (''Br'') of 10 kg minimum and a coercive force (''Hc'') of 3.8 Oe minimum.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (''HTSUS''), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0000 if of alloy steel. Although the subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Initiation of Changed Circumstances Antidumping Duty Administrative Review

Pursuant to section 751(d)(1) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. To the Department's knowledge the following are U.S. producers of tin mill products: Bethlehem Steel Corporation, National Steel Corporation, Midwest Division, Ohio Coatings Corporation, U.S. Steel Group, a Unit of USX Corp., Wheeling-Pittsburgh Steel Corporation, and USS-Posco Industries, Inc. Based upon the statements of no interest by Weirton

Steel Corporation, United States Steel Corporation, Bethlehem Steel Corporation, USS-Posco Industries, and National Steel Corporation, we believe there is information sufficient to warrant initiation of this changed circumstances review.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. Interested parties may submit comments for consideration in the Department's preliminary results not later than 14 days after publication of this notice. Responses to those comments may be submitted not later than 7 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. The Department will also issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**. While the changed circumstances review is underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the merchandise that is the subject of this changed circumstances review, will continue unless and until it is modified pursuant to the final results of this changed circumstances review or other administrative review.

This notice is in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: October 21, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–27394 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Geographic and Atmospheric Administration

Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOD).

ACTION: Notice and request for applications.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or Sanctuary) is seeking applicants for the following two vacant seats on its Sanctuary Advisory Council (Council): Fishing and Native Hawaiian. The Sanctuary will choose two applicants as members and two as alternates to those members.Members are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the Council's Charter.

DATES: Applications are due by November 20, 2002.

ADDRESSES: Application kits may be obtained on our website *www.hihwnms.nos.noaa.gov* or from Amy Glester at the Hawaiian Islands Humpback Whale National Marine Sanctuary, 6700 Kalanianaole Hwy, Suite 104, Honolulu, Hawaii 96825. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Amy Glester at (808) 397–2655, or *amy.glester@noaa.gov.*

SUPPLEMENTARY INFORMATION: The HIHWNMS Advisory Council was established in March 1996 (the current Council has served since July 1998) to assure continued public participation in the management of the Sanctuary. Since its establishment, the Council has played a vital role in the decisions affecting the Sanctuary surrounding the main Hawaiian Islands.

The Council's twenty-four voting members represent a variety of local user groups, as well as the general public, plus ten local, state and Federal governmental jurisdictions.

The Council is supported by three subcommittees: a Research Committee chaired by the Research Representative, an Education Committee chaired by the Education Representative, and a Conservation Committee chaired by the Conservation Representative, each respectively dealing with matters concerning research, education and resource protection.

The Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat around the main Hawaiian Islands.

The council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program within the context of Hawaii's marine programs and policies.

Authority: 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program).

Dated: October 15, 2002

Jamison S. Hawkins,

Acting Assistant Administrator for Oceans and Coastal Zone Management.

[FR Doc. 02–27368 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. 2003–C–002]

Request for comments and notice of round table meetings regarding Small Business Views on Additional Harmonization of Patent Laws

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for input and notice of round table meetings.

SUMMARY: The United States Patent and Trademark Office (USPTO) seeks comments from small businesses, experts in global patent issues and other interested parties on achieving additional harmonization of patent laws. As a part of this effort, USPTO announces the scheduling of three round table meetings to receive views on patent law harmonization issues.

DATES: Comments must be received by December 19, 2002, to ensure consideration. Requests to participate in round table meetings must be received by November 22, 2002. If it becomes necessary to limit the number of participants, preference will be given to first-in-time requests. The round table meetings are tentatively scheduled for December 2, 2002, in the greater Los

Angeles, California area; December 4, 2002, in the greater Chicago, Illinois area; and December 19, 2002, in the greater Washington, DC area.

ADDRESSES: Written comments and requests to participate in the round table meetings should be addressed to the United States Patent and Trademark Office, Office of International Relations, Room 902, 2121 Crystal Drive, Arlington, VA 22202, *Attn:* Jon Santamauro, Small Business/Harmonization; faxed to Jon Santamauro's attention at (703) 305–8885; or sent via electronic mail to *sbpatentharmonization@uspto.gov.* Specific times and locations for the round table meetings will be determined based on responses received from persons who express an interest in participation. Details as to those times and locations will be communicated to participants and posted on USPTO's Web site at *www.uspto.gov.*

FOR FURTHER INFORMATION CONTACT: Jon Santamauro by telephone at (703) 305–9300 or by electronic mail at *sbpatentharmonization@uspto.gov.*

SUPPLEMENTARY INFORMATION:

Background

In response to a request by the Ranking Republican Member of the Senate Committee on Small Business and Entrepreneurship and the Chairman of the House Committee on Small Business, the General Accounting Office (GAO) analyzed and prepared a report on (1) whether small businesses face impediments in obtaining foreign patent protection; (2) what impact any impediments have on their foreign patent decisions; and (3) whether any Federal actions could help small businesses overcome the impediments they may face in obtaining foreign patents. The Congressional requesters expressed concern that some small businesses, particularly high-technology firms, were not obtaining patent protection overseas and thus were losing potential sales in foreign markets.

The GAO completed its report, captioned Federal Action Needed to Help Small Businesses Address Foreign Patent Challenges (GAO–02–789), in July 2002 and made it available to the public in August 2002. The report is available on-line at *www.gao.gov.*

According to the report, foreign patent costs are the most significant impediment that small businesses face in trying to protect their inventions abroad. The conclusion is based on information received from small businesses and patent attorneys consulted by GAO in preparation of the report. The report also identifies impediments including companies' limited foreign patent knowledge; differences among foreign patent systems; and the existence of challenging business climates and weak patent enforcement in certain countries.

To help address these impediments, GAO recommends that USPTO obtain input from small businesses, experts in global patent issues, and other interested parties in order to assess the advantages and disadvantages of various options for achieving additional patent law harmonization. In addition, GAO recommends that the Administrator of the Small Business Administration, with assistance of USPTO, collect and make available information about key aspects of foreign patent laws, requirements, procedures, and costs that would be useful to small businesses that are considering whether to obtain foreign patent protection.

Consistent with the GAO recommendation, the Congressional requesters of the GAO report have requested that the USPTO convene a series of round table meetings with small business owners and policy experts by December 31, 2002, to hear views on the harmonization of global patent laws. They further request a synopsis of the proceedings and findings by March 31, 2003.

Round Table Meetings and Request for Comments

The USPTO requests that interested parties submit comments and/or recommendations on achieving additional harmonization of patent laws. It is suggested that this input be categorized as follows:

(1) Cost and fee related issues.

(2) Procedural and administrative issues.

(3) Substantive patent law issues.

(4) Enforcement issues.

(5) Miscellaneous issues.

Comments must be received by December 19, 2002, to ensure consideration, and should be addressed to the United States Patent and Trademark Office, Office of International Relations, Room 902, 2121 Crystal Drive, Arlington, VA 22202, Attn: Jon Santamauro, Small Business/Harmonization; faxed to Jon Santamauro's attention at (703) 305–8885; or sent via electronic mail to *sbpatentharmonization@uspto.gov.*

In addition, the USPTO will conduct round table meetings to hear views on the harmonization of international patent laws. The round table meetings are tentatively scheduled for December 2, 2002, in the greater Los Angeles, California area; December 4, 2002, in the greater Chicago, Illinois area; and December 19, 2002, in the greater Washington, DC area.

Requests to participate in round table meetings must be received by November 22, 2002, and should be addressed as indicated above. If it becomes necessary to limit the number of participants, preference will be given to first-in-time requests. Specific times and locations for the round table meetings will be determined based on responses received from persons who express an interest in participation. Details as to those times and locations will be communicated to participants and posted on USPTO's Web site at *www.uspto.gov.*

Dated: October 22, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 02–27323 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF ENERGY

American Statistical Association Committee on Energy Statistics; Notice of Renewal

AGENCY: Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), I hereby certify that the renewal of the charter of the American Statistical Association Committee on Energy Statistics is in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to section 102–3.60, title 41, Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel M. Samuel at (202) 586–3279.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide advice on a continuing basis to the Administrator of the Energy Information Administration (EIA), including:

1. Periodic review of and advice on Energy Information Administration data collections and analysis programs;

2. Advice on technical and methodological issues in planning, operation, and the review of Energy Information Administration statistical programs and their relative priorities; and

3. Advice on matters concerning improved energy modeling and forecasting tools, particularly regarding their functioning, relevancy, and results.

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

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 02–27329 Filed 10–25–02; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 20th and Thursday, November 21, 2002.

ADDRESSES: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW, (Room 1E–245), Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Director of the Environmental Management Advisory Board, (EM–10), 1000 Independence Avenue SW, (Room 5B–171), Washington, DC 20585. The telephone number is 202–586–4400. The Internet address is *james.melillo@em.doe.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the Environmental Management Program. The Board will contribute to the effective operation of the Environmental Management Program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing the Office of Environmental Management.

Preliminary Agenda

Wednesday, November 20, 2002

1 p.m. Public Meeting Open
—Welcome
—Opening Remarks
—Orientation
—Environmental Management Overview
—Organizational Discussions
5 p.m. Public Comment Period and Adjournment

Thursday, November 21, 2002

9 a.m. Opening Remarks
—Roundtable Discussion
—Board Work Session
2 p.m. Public Comment Period and Adjournment

Public Participation: This meeting is open to the public. If you would like to file a written statement with the Board, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, please contact Mr. Melillo at the address or telephone number listed above, or call the Environmental Management Advisory Board office at 202–586–4400, and we will reserve time for you on the agenda. Those who call in and or register in advance will be given the opportunity to speak first. Others will be accommodated as time permits. The Board Chair will conduct the meeting in an orderly manner.

Minutes: We will make the minutes of the meeting available for public review and copying by December 20, 2002. The minutes and transcript of the meeting will be available for viewing at the Freedom of Information Public Reading Room (1E–190) in the Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. The Room is open Monday through Friday from 9 a.m.–4 p.m. except on Federal holidays.

Issued in Washington, DC on October 21, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–27328 Filed 10–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, November 16, 2002 8:30 a.m.—Noon.

ADDRESSES: Crosby Senior Center, 8910 Willey Road, Harrison, OH.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

8:30 a.m. Call to Order

8:30—8:45 a.m. Chair's Remarks and Ex Officio Announcements

8:45—9 a.m. Feedback from Chairs Meeting

9—10 a.m. Silos Update and Planning for Workshop

10—10:15 a.m. Break

10:15—11:45 a.m. Stewardship Management Plan Discussion

11:45—12 p.m. Public Comment

Noon Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday—Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, c/o Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on October 22, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–27330 Filed 10–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice be announced in the **Federal Register**.

DATES: November 21, 2002 from 8:00 AM to 5:00 PM, and November 22, 2002 from 8:00 AM to 1:00 PM.

ADDRESSES: The Madison Hotel, Fifteenth and M Streets, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Planning, Budget, and Outreach, Energy Efficiency and Renewable Energy (EERE), U.S. Department of Energy (DOE), Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda:

- STEAB Committee updates
- STEAB Annual Report Kickoff
- EERE State Success Stories
- Discussion Sessions with the Office of Energy Efficiency and Renewable Energy, USDOE Staff
- Update on Current Energy Legislation
- Public Comment Period

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the 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, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 21, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–27331 Filed 10–25–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7400–6]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for the Borden Chemical, Inc. Formaldehyde Plant Geismar, Ascension Parish, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to state operating permit.

SUMMARY: This notice announces that the EPA Administrator has denied the petition to object to a state operating permit issued by the Louisiana Department of Environmental Quality (LDEQ) for Borden Chemical, Inc.'s formaldehyde plant in Geismar, Louisiana. Pursuant to section 505(b)(2) of the Clean Air Act (Act), the petitioner may seek judicial review of this petition response in the United States Court of Appeals for the Fifth Circuit. Any petition must be filed within 60 days of the date this notice appears in the **Federal Register**, pursuant to section 307(d) of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2001.htm*

FOR FURTHER INFORMATION CONTACT: Bonnie Braganza, Air Permitting Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7340 or e-mail at *braganza.bonnie@epa.gov.*

SUPPLEMENTARY INFORMATION: The Clean Air Act (Act) affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

The Louisiana Environmental Action Network submitted a petition to the Administrator on January 2, 2001, requesting that EPA object to the modified title V operating permit issued for Borden Chemical, Inc.'s formaldehyde plant in Geismar, Louisiana. The petition objects to issuance of the proposed permit on the following grounds: (1) The emission reductions relied upon to avoid designation as a major modification are not real, actual, or allowable under Federal law and regulations; (2) nonattainment new source review applies because the emission reductions were not surplus under Louisiana regulations; (3) Borden should not be rewarded for violating the Clean Air Act, and the modified permit is contrary to EPA policy and the intent of the Act; and (4) a new facility in the Baton Rouge nonattainment area will not provide sufficient reductions to achieve the ozone standard.

On September 30, 2002, the Administrator issued an order denying the petition. The order explains the reasons for the Administrator's decision.

Dated: October 19, 2002.

Gregg A. Cooke,

Regional Administrator.

[FR Doc. 02–27339 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CO–001–0071; FRL–7400–8]

Adequacy Status of the Lamar and Steamboat Springs, CO PM_{10} Maintenance Plans for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this document, EPA is notifying the public that we have found that the motor vehicle emissions budgets in the Lamar and Steamboat Springs, Colorado particulate matter of 10 micrograms in size or smaller (PM_{10}) maintenance plans submitted on July 31, 2002, are adequate for conformity purposes. On March 2, 1999, the DC Circuit Court ruled that budgets in submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the City of Lamar, the City of Steamboat Springs, the Colorado Department of Transportation and the U.S. Department of Transportation are required to use the motor vehicle emissions budgets from these submitted maintenance plans for future conformity determinations.

DATES: This finding is effective November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Kerri Fiedler, Air & Radiation Program (8P–AR), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6493. The letter documenting our finding is available at EPA's conformity Web site: *http://www.epa.gov/oms/transp/conform/adequacy.htm.*

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

This action is simply an announcement of a finding that we have already made. We sent a letter to the Colorado Air Pollution Control Division on September 25, 2002 stating that the motor vehicle emissions budgets in the submitted Lamar and Steamboat Springs PM_{10} maintenance plans are adequate. This finding has also been announced on our conformity Web site at *http://www.epa.gov/oms/transp/conform/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from our completeness review, and it also should not be used to prejudge our ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved, and vice versa.

We've described our process for determining the adequacy of submitted SIP budgets in a memo entitled, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,'' dated May 14, 1999. We followed this guidance in making our adequacy determination.

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

Dated: October 21, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 02–27345 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7400–9]

Request for Nominations to the Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations of qualified candidates to be considered for appointments to fill vacancies on the Good Neighbor Environmental Board. Suggested deadline for receiving nominations is Friday, November 22, 2002. Selection of candidates for appointments will be made by EPA Administrator Christine Todd Whitman. Appointments are scheduled to be announced during January 2003.

ADDRESSES: Submit nomination materials to: Elaine Koerner, Designated Federal Officer, Good Neighbor Environmental Board, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601E), 655 15th. St., NW., Washington, DC. 20460.

FOR FURTHER INFORMATION CONTACT: Elaine Koerner, Designated Federal Officer, Good Neighbor Environmental Board, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601E), 655 15th. St NW., Washington, DC 20460; telephone 202–233–0069; fax 202–233–0070; email *koerner.elaine@epa.gov.*

SUPPLEMENTARY INFORMATION: The Good Neighbor Environmental Board meets three times each calendar year at different locations along the U.S.-Mexico border. It was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the U.S. President and Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the U.S. side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. Board members typically contribute 10–15 hours per month to the Board's work. The Board membership position is voluntary; travel expenses are covered.

The following criteria will be used to evaluate nominees:

- Residence in one of the four U.S. border states.
- Professional knowledge of, and experience with, environmental infrastructure activities and policy along the U.S.-Mexico border.
- Senior level-experience that fills a gap in Board representation, or brings a new and relevant dimension to its deliberations.
- Representation of a sector or group that is involved in border region environmental infrastructure.
- Demonstrated ability to work in a consensus-building process with a wide range of representatives from diverse constituencies.
- Willingness to serve a two-year term as an actively-contributing member, with possible re-appointment to a second term.

Nominees' qualifications will be assessed under the mandates of the Federal Advisory Committee Act, which requires Committees to maintain diversity across a broad range of constituencies, sectors, and groups.

Nominations for membership must include a resume describing the professional and educational qualifications of the nominee as well as community-based experience. Contact details should include full name and title, business mailing address, telephone, fax, and e-mail address. A supporting letter of endorsement is encouraged but not required.

Dated: October 16, 2002.

Elaine M. Koerner,

Designated Federal Officer.

[FR Doc. 02–27347 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7401–7]

Air Quality Criteria for Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Notice of workshop.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) National Center for Environmental Assessment, within the Agency's Office of Research and Development, is announcing a Workshop on GAM-Related Statistical Issues in Particulate Matter (PM) Epidemiology. The workshop is open to the public.

DATES: The workshop will begin on November 4, 2002, at 8:45 a.m. and will conclude on November 6, at 4 p.m.

ADDRESSES: The workshop will be held at the Sheraton Imperial Hotel, 4700 Emperor Boulevard, Durham, North Carolina 27703. Logistics for the workshop are being arranged by Science Applications International Corporation (SAIC), an EPA contractor. The public is invited to attend the workshop. Persons wanting to register for the GAM workshop may do so at the following Web site *http://www.cvent.com.* The event code is EPHVP19M8U.

FOR FURTHER INFORMATION CONTACT: For workshop information, registration, and logistics, contact Alina Martin, Science Applications International Corporation, 11251 Roger Bacon Drive, Reston, VA 20190; telephone: 703–318–4678; facsimile:703–736–0826; or e-mail at *martinali@saic.com.*

For technical information, contact Dr. Robert Elias, U.S. EPA, NCEA–RTP, B243–01, Research Triangle Park, NC 27711; telephone: 919–541–4167; facsimile: 919–541–1818; or e-mail: *elias.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: The workshop, which is being organized in coordination with the Health Effects Institute (HEI), is being held to provide a forum (open to the public) for discussion of: (a) Newly identified issues related to the conduct of General Additive Model (GAM) analyses, using commercially available software packages (*e.g.*, S-plus or SAS), in time-series studies of relationships between ambient air particulate matter (PM) and mortality/morbidity endpoints (*e.g.*, daily deaths, hospital admissions); (b) progress made to date in the conduct of reanalyses of a group of GAM-related studies identified by EPA as being of high priority for policy considerations (*see www.epa.gov/ncea/partmatt.htm* for more information); and (c) additional considerations for future directions for new PM epidemiologic analyses. After the workshop, participating investigators will have the opportunity to modify preliminary reanalyses presented at the workshop to take into account the workshop discussions and to submit to EPA written ''short communications'' conveying key information on the reanalyses and their outcomes. Those short communications are to be peer-reviewed by an HEI-assembled panel of experts and then included in an HEI Report, to be made available in early 2003. The peer-reviewed reanalyses in the HEI Report will be considered by NCEA–RTP staff in preparing revised draft chapters bearing on PM epidemiology studies for inclusion in a Fourth External Review Draft of EPA's Air Quality Criteria Document for PM to be released next spring for public comment (60 days) and Clean Air Scientific Advisory Committee (CASAC) review at a public meeting in mid-summer 2003. The final version of the PM Criteria Document will ultimately provide key scientific bases for the now ongoing Congressionally mandated periodic review of the PM National Ambient Air Quality Standards (PM NAAQS).

A detailed agenda for the meeting will be made available via the above-listed Web site or contact person.

Dated: October 22, 2002.

Art Payne,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–27491 Filed 10–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7400–7]

Draft Chesapeake Bay Comprehensive Oyster Management Plan; Availability

The U.S. Environmental Protection Agency's Chesapeake Bay Program Office, on behalf of the partners of the Chesapeake Bay Program, announces the availability of the Draft Chesapeake Bay Comprehensive Oyster Management Plan for a 30-day period of public review and comment. The Draft Plan addresses both habitat restoration and oyster fishery management. It emphasizes biologically based, strategic decision making, enables an adaptive management approach, and provides for better coordination among key agencies, organizations, and institutions involved in oyster restoration in Maryland and Virginia waters of Chesapeake Bay and its tidal tributaries. The Chesapeake Bay oyster partners include the U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, National Oceanic and Atmospheric Administration, Maryland Department of Natural Resources, Virginia Marine Resources Commission, Maryland Oyster Recovery Partnership, Virginia Oyster Heritage Program, and Chesapeake Bay Foundation. Following receipt of comments, a final Draft Plan will be circulated to Chesapeake Bay Program signatory partners for approval. It is expected that the final Plan will be adopted by the Chesapeake Executive Council in 2003. On November 4, 2002, the Draft Plan will be available on-line at the EPA Region III Web site *www.epa.gov/r3chespk/*, or by regular mail from the EPA Chesapeake Bay Program Office (*Phone:* (410) 267–5700).

Comments should be postmarked no later than December 4, 2002. Comments can be sent either by email to *fritz.mike@epa.gov* or by regular mail to Michael Fritz, U.S. EPA, 410 Severn Avenue, Suite 109, Annapolis, MD 21403. Further information about the Chesapeake Bay Program and oysters in the bay is available at *www.chesapeakebay.net.*

Diana Esher,

Deputy Director, Chesapeake Bay Program Office.

[FR Doc. 02–27346 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following

collections of information titled: (1) Interagency Notice of Change in Director or Executive Officer, and (2) Customer Assistance.

DATES: Comments must be submitted on or before December 27, 2002.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Consumer and Compliance Unit), (202) 898–7453, Legal Division, Room MB–3109, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (FAX number (202) 898–3838; Internet address: *comments@fdic.gov*).

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collections of Information

1. *Title:* Interagency Notice of Change in Director or Executive Officer.
OMB Number: 3064–0097.
Frequency of Response: On occasion.
Affected Public: All financial institutions.
Estimated Number of Respondents: 200.
Estimated Time per Response: 2 hours.
Total Annual Burden: 400 hours.
General Description of Collection: The Interagency Notice of Change in Director or Executive Officer is submitted regarding the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer. The information is used by the FDIC to make an evaluation of the general character of individuals who will be involved in the management of depository institutions, as required by statute.

2. *Title:* Customer Assistance.
OMB Number: 3064–0134.
Frequency of Response: On occasion.
Affected Public: All financial institutions.
Estimated Number of Respondents: 5,000.
Estimated Time per Response: 30 minutes.
Total Annual Burden: 2,500 hours.
General Description of Collection: This collection permits the FDIC to collect information from customers of financial institutions who have inquiries or complaints about service. Customers may document their complaints or inquiries to the FDIC using a letter or on an optional form.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC this 21st day of October, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–27269 Filed 10–25–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Banking Policy; Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of the first meeting of the FDIC Advisory Committee on Banking Policy (''Advisory Committee''), which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on a broad range of issues relating to the FDIC's mission and activities.

TIME AND PLACE: Wednesday, November 13, 2002, from 9 a.m. to 12:30 p.m., and 1:30 to 3:30 p.m. The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

AGENDA: The agenda items include discussion of the FDIC organizational structure, corporate priorities and challenges for the future. Agenda items are subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

TYPE OF MEETING: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public must present a photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting.

FOR FURTHER INFORMATION: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the Corporation, at (202) 898–3742.

Dated: October 23, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Committee Management Officer.

[FR Doc. 02–27324 Filed 10–25–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1433–DR]

Indiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana, (FEMA–1433–DR), dated September 25, 2002, and related determinations.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 25, 2002:

Madison County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–27319 Filed 10–25–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1437–DR]

Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1437–DR), dated October 3, 2002, and related determinations.

EFFECTIVE DATE: October 16, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 16, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–27316 Filed 10–25–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1435–DR]

Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1435–DR), dated September 27, 2002, and related determinations.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 1, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–27317 Filed 10–25–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1434–DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1434–DR), dated September 26, 2002, and related determinations.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 26, 2002: Webb County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–27318 Filed 10–25–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 12, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Charles F. Sposato, Elkton, Maryland; to acquire additional voting shares of Cecil Bancorp, Inc., Elkton, Maryland, and thereby indirectly acquire additional voting shares of Cecil Federal Bank, Elkton, Maryland.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Harrell Investment Partners Limited Partnership, Camden, Arkansas, and Searcy W. Harrell, Jr., and Peggy Harrell, Camden, Arkansas, as general partners, to gain control of Harrell Bancshares, Inc., Camden, Arkansas, and thereby indirectly acquire voting shares of Calhoun County Bank, Hampton, Arkansas, and First Bank of South Arkansas, Camden, Arkansas.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Nagy Family Limited Partnership I, a Washington limited partnership, Ferenc Nagy and Susanna Nagy, general partners, and Ferenc Nagy and Eva Brevick, as individuals, all of Seattle, Washington; to acquire voting shares of Viking Financial Services Corp., Seattle, Washington, and thereby indirectly acquire voting shares of Viking Community Bank, Seattle, Washington.

Board of Governors of the Federal Reserve System, October 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–27307 Filed 10–25–02; 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 21, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 3030-B4470:

1. Southwest Florida Community Bancorp, Inc., Fort Myers, Florida; to acquire at least 50 percent of the voting shares of Sanibel Captiva Community Bank, Sanibel, Florida (in organization).

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Platte Valley Financial Service Companies, Inc., Scottsbluff, Nebraska; to retain 100 percent of the voting shares of Tri-County Bank National Association, Cheyenne, Wyoming.

Board of Governors of the Federal Reserve System, October 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–27308 Filed 10–25–02; 8:45 am]

BILLING CODE 6210–01–S

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Thursday, October 31, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, NW., Washington, DC 20551.

STATUS: Open.

We ask that you notify us in advance if you plan to attend the open meeting and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling (202) 452–2474 or you may register on-line. You may pre-register until close of business October 30, 2002. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call (202) 452–2955 for further information.

Privacy Act Notice: Providing the information requested is voluntary; however, failure to provide your name, date of birth, and social security number or passport number may result in denial of entry to the Federal Reserve Board. This information is solicited pursuant to Sections 10 and 11 of the Federal Reserve Act and will be used to facilitate a search of law enforcement databases to confirm that no threat is posed to Board employees or property. It may be disclosed to other persons to evaluate a potential threat. The information also may be provided to law enforcement agencies, courts and others, but only to the extent necessary to investigate or prosecute a violation of law.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of the routine nature, no discussion of the following item is anticipated. The matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed 2003 Private Sector Adjustment Factor.

Discussion Agenda

2. Final amendments to Regulation B (Equal Credit Opportunity) that would conclude the Board's review of the regulation. (Proposed earlier for public comment; Docket No. 1008)

3. Final amendments to Regulation A (Extensions of Credit by Federal Reserve Banks) and Regulation D (Reserve Requirements for Depository Institutions) that would implement revisions to discount-window programs. (Proposed earlier for public comment; Docket No. 1123)

4. Proposals regarding sections 23A and 23B of the Federal Reserve Act:

a. Final rules that would comprehensively implement sections 23A and 23B through new Regulation W (Transactions Between Member Banks and Their Affiliates). (Proposed earlier for public comment; Docket No. 1103); and rescind the Board's existing formal interpretations of sections 23A and 23B in light of Regulation W; and

b. Publish for comment a proposed rule that would limit the availability of an exemption from section 23A provided in section 250.250 of the

Board's formal interpretations for loans purchased by a bank from an affiliate.

5. Proposed 2003 fees for priced services and electronic connections.

6. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: October 24, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–27524 Filed 10–24–02; 3:07 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration), Department of Health and Human Services (HHS).

ACTION: Notice of modified or altered system of records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a SOR, ''CMS Utilization Review Investigatory Files, System No. 09–70–0527.'' We propose to change the name of this system to ''CMS Fraud Investigation Database (FID),'' to more accurately reflect the increase in scope proposed by this modification. We propose to broaden the scope of responsibility and activities covered by this system to include activities related to fraud and abuse in all health care programs administered by CMS. We are deleting routine uses number 1 pertaining to Department of Justice (DOJ) for consideration of criminal prosecution or civil action, number 2 pertaining to state or local licensing authorities (including state medical review boards), professional review organizations, peer review groups, medical consultants, or other professional associations for possible administrative action, number 3 pertaining to * * * officers and employees of state governments * * * Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) * * * as well as states attorneys * * *, number 4 pertaining to * * * third parties for the purpose of establishing or negating a violation, number 5 pertaining to * * * cases involving fraudulent tax returns or forger of Medicare checks to the Treasury Department, postal authorities, or to appropriate law enforcement authorities, and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA).

Disclosures of the data allowed in routine uses number 1, 2, 3, 4, 5, and to the SSA will be accomplished by a new routine use ''to combat fraud and abuse in certain health benefits programs'' and will be numbered as routine use number 5. We propose a new routine use number 1 specifically for the release of information in the system to a contractor or consultant who need to have access to the records in order to assist CMS. We propose a new routine use number 4 specifically for the release of information in the system to a contractor that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program to combat fraud and abuse. We propose to modify the language of routine uses number 6 and number 7 to clarify the circumstances for disclosure under these routine uses and change the numbers of these routine uses to number 2 and number 3.

The security classification previously reported as ''None'' will be modified to reflect that the data in this system is considered to be ''Level Three Privacy Act Sensitive.'' The routine uses will then be prioritized and reordered according to their proposed usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SOR.

The primary purpose of this SOR is to identify if a violation(s) of a provision of the Social Security Act (the Act) or a related penal or civil provision of the United States Code (U.S.C.) related to Medicare (Title XVIII), Medicaid (Title XIX), HMO/Managed Care (Title XX), and Children's Health Insurance Program (Title XXI) have been committed, determine if HHS has made a proper payment as prescribed under applicable sections of the Act and whether these programs have been abused, coordinate investigations related to Medicare, Medicaid, HMO/Managed Care, and Children's Health Insurance Program, and prevent duplications, and provide case file material to the HHS Office of Inspector General when a case is referred for fraud investigation. Information retrieved from this SOR will also be disclosed to: (1) Support regulatory and policy functions performed within the Agency or by a contractor or consultant; (2) support constituent requests made to congressional representatives; (3) support litigation involving the Agency related to this system; and (4) combat fraud and abuse in certain health care programs. We have provided background information about the modified system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 9, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Mark Koepke, Division of Program Integrity Operations, Program Integrity Group, Office of Financial Management, CMS, Mail-stop C3–02–16, 7500 Security Boulevard, Baltimore,

Maryland 21244–1850. The telephone number is 410–786–0524.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Statutory and Regulatory Basis for SOR

In 1988, CMS established a SOR the authority of sections 205, 1106, 1107, 1815, 1816, 1833, 1842, 1872, 1874, 1876, 1877, and 1902 of the Act, United States Code (U.S.C.) sections 405, 1306, 1307, 1395g, 1395h, 1395l, 1395u, 1395ii, 1395kk, 1395mm, 1395nn, and 1396a). Notice of this system, ''CMS Utilization Review Investigatory Files, System No. 09–70–0527,'' was published in the **Federal Register** at 53 FR 52792, (Dec. 29, 1988), an unnumbered routine use was added for SSA at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), and then at 65 FR 50552 (Aug. 18, 2000), two of the fraud and abuse routine uses were revised and a third deleted.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains the name, work address, work phone number, social security number, Unique Provider Identification Number (UPIN), and other identifying demographics of individuals alleged to have violated provision of the Act related to Medicare, Medicaid, HMO/Managed Care, and Children's Health Insurance Program or other criminal/civil statutes as they pertain to The Act programs where substantial basis for criminal/civil prosecution exist, defendants in criminal prosecution cases, or persons alleged to have abused the programs. The last category of individuals would, for example, include persons alleged to have rendered unnecessary services to Medicare beneficiaries or Medicaid recipients, over utilized services, or engaged in improper billing.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose, which is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release FID information that can be associated with an individual as provided for under ''Section III. Entities Who May Receive Disclosures Under Routine Use.'' Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with FID information and identifiers. Non-identifiable data includes individual records with FID information and masked identifiers or FID information with identifiers stripped out of the file.

We will only collect the minimum personal data necessary to achieve the purpose of FID. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the system of records will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, disclosure of individual-specific information for the purposes of combating fraud and abuse in a health benefits program funded in whole or in part by Federal funds.

2. Determines:

a. That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the FID without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries and other individuals often request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review,

CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

4. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

5. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require FID information for the purpose of combating fraud and abuse in such Federally funded programs.

A. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The FID system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act (PRA) of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, appendix III, ''Security of Federal Automated Information Resources.'' CMS has prepared a comprehensive system security plan as required by the Office and Management and Budget (OMB) Circular A–130, appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems.'' Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- *Database Administrator* class owns the database objects, *e.g.*, tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- *Quality Control Administrator* class has read and write access to key fields in the database;
- *Quality Indicator Report Generator* class has read-only access to all fields and tables;
- *Policy Research* class has query access to tables, but are not allowed to access confidential personal identification information; and
- *Submitter* class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the FID system: Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System resources caused by fire, electricity, water, and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are

determined and implemented at the Agency level.

• Inactivity Log-out—Access to the NT workstation is automatically logged-out after a specified period of inactivity.

• Warnings—Legal notices and security warnings display on all servers and workstations.

• Remote Access Security (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974, the Computer Security Act of 1987, OMB Circular A–130, revised, Information Resource Management Circular #10, HHS Automated Information Systems Security Program, the CMS Information Systems Security Policy and Program Handbook, and other CMS systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of FID data. FID information on individuals is completed by contractor personnel and submitted to CMS through standard systems located at different locations. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of FID data.

CMS will take precautionary measures (*see* item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure of identifiable data from the modified system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: September 9, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

System No. 09–70–0527

SYSTEM NAME:

Centers for Medicare & Medicaid Services (CMS) Fraud Investigation Database (FID), HHS/CMS/OFM.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitivity.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850. Information in this system is also maintained at various remote locations listed in appendix ''A.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals alleged to have violated provision of the Act related to Medicare (Title XVIII), Medicaid (Title XIV), HMO/Managed Care (Title XX), and Children's Health Insurance Program (Title XXI) or other criminal/civil statutes as they pertain to the Act programs where substantial basis for criminal/civil prosecution exist, defendants in criminal prosecution cases, or persons alleged to have abused the programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the name, work address, work phone number, social security number, Unique Provider Identification Number (UPIN), and other identifying demographics of individuals alleged to have violated provision of the Act or persons alleged to have abused Medicare and/or Medicaid programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system was established under the authority of sections 205, 1106, 1107, 1815, 1816, 1833, 1842, 1872, 1874, 1876, 1877, and 1902 of the Act (Title 42 United States Code (U.S.C.) sections 405, 1306, 1307, 1395g, 1395h, 1395l, 1395u, 1395ii, 1395kk, 1395mm, 1395nn, and 1396a).

PURPOSE(S):

The primary purpose of the system of records is to identify if a violation(s) of a provision of the Act or a related penal or civil provision of the United States Code (U.S.C.) related to Medicare (Title XVIII), Medicaid (Title XIV), HMO/Managed Care (Title XX), and Children's Health Insurance Program (Title XXI) have been committed, determine if HHS has made a proper payment as prescribed under applicable sections of the Act and whether these programs have been abused, coordinate investigations related to Medicare, Medicaid, HMO/Managed Care, and Children's Health Insurance Program, and prevent duplications, and provide case file material to the HHS Office of the Inspector General when a case is referred for fraud investigation. Information retrieved from this system of records will also be disclosed to: support regulatory and policy functions performed within the Agency or by a contractor or consultant, support constituent requests made to a congressional representative, support litigation involving the Agency related to this system of records, and to combat fraud and abuse in certain health care programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the FID without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462, December 28, 2000, as amended by 66 FR 12434, February 26,

2001). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

4. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

5. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the name of the subject of the investigation and assigned UPIN number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the FID system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, *e.g.*, security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised) appendix III.

RETENTION AND DISPOSAL:

Records are maintained 15 years in a secure storage area with identifiers.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Program Integrity Group, Office of Financial Management, CMS, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, social security number (SSN) or UPIN, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system include data collected from FID computer files as transmitted by the contractor sites.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

HHS claims exemption of certain records (case files on active fraud investigations) in the system from notification and access procedures under 5 U.S.C. 522a (k)(2) inasmuch as these records are investigatory materials compiled for program (law) enforcement in anticipation of a criminal or administrative proceedings. (*See* Department Regulation (45 CFR 5b.11))

Appendix A. Health Insurance Claims

Medicare records are maintained at the CMS Central Office (see section 1 below for the address). Health Insurance Records of the Medicare program can also be accessed through a representative of the CMS Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations that share in administering provisions of the health insurance programs. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Health Care Financing Administration and the Social Security Administration to perform specific task in the Medicare program (see section three below for addresses for intermediaries, section four addresses the carriers, and section five addresses the Payment Safeguard Contractors.

I. Central Office Address

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

II. CMS Regional Offices

Boston Region—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30 a.m.–5 p.m.

New York Region—New Jersey, New York, Puerto Rico, Virgin Islands. 26 Federal Plaza, Room 715, New York, New York 10007, Office Hours: 8:30 a.m.–5 p.m.

Philadelphia Region—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Post Office Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30 a.m.–5 p.m.

Atlanta Region—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee. 101 Marietta Street, Suite 702, Atlanta, Georgia 30223, Office Hours: 8:30 a.m.–4:30 p.m.

Chicago Region—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. Suite A—824, Chicago, Illinois 60604. Office Hours: 8 a.m.–4:45 p.m.

Dallas Region—Arkansas, Louisiana, New Mexico, Oklahoma, Texas, 1200 Main Tower Building, Dallas, Texas. Office Hours: 8 a.m.–4:30 p.m.

Kansas City Region—Iowa, Kansas, Missouri, Nebraska. New Federal Office Building, 601 East 12th Street Room 436, Kansas City, Missouri 64106. Office Hours: 8 a.m.–4:45 p.m.

Denver Region—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Federal Office Building, 1961 Stout St Room 1185, Denver, Colorado 80294. Office Hours: 8 a.m.–4:30 p.m.

San Francisco Region—American Samoa, Arizona, California, Guam, Hawaii, Nevada. Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8 a.m.–4:30 p.m.

Seattle Region—Alaska, Idaho, Oregon, Washington. 1321 Second Avenue, Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours 8 a.m.–4:30 p.m.

III. Intermediary Addresses (Hospital Insurance)

Medicare Coordinator, Assoc. Hospital Serv. Maine (ME BC), 2 Gannett Drive South, Portland, ME 04106–6911.

Medicare Coordinator, Anthem New Hampshire, 300 Goffs Falls Road, Manchester, NH 03111–0001.

Medicare Coordinator, BC/BS Rhode Island (RI BC), 444 Westminster Street, Providence, RI 02903–3279.

Medicare Coordinator, Empire Medicare Services, 400 S. Salina Street, Syracuse, NY 13202.

Medicare Coordinator, Cooperativa, PO Box 363428, San Juan, PR 00936–3428.

Medicare Coordinator, Maryland B/C, PO Box 4368, 1946 Greenspring Ave., Timonium, MD 21093.

Medicare Coordinator, Highmark, P5103, 120 Fifth Avenue Place, Pittsburgh, PA 15222–3099.

Medicare Coordinator, United Government Services, 1515 N. Rivercenter Dr., Milwaukee, WI 53212.

Medicare Coordinator, Alabama B/C, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Florida B/C, 532 Riverside Ave., Jacksonville, FL 32202–4918.

Medicare Coordinator, Georgia B/C, PO Box 9048, 2357 Warm Springs Road, Columbus, GA 31908.

Medicare Coordinator, Mississippi B/C B MS, PO Box 23035, 3545 Lakeland Drive, Jackson, MI 39225–3035.

Medicare Coordinator, North Carolina B/C, PO Box 2291, Durham, NC 27702–2291.

Medicare Coordinator, Palmetto GBA A/RHHI, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Tennessee B/C, 801 Pine Street, Chattanooga, TN 37402–2555.

Medicare Coordinator, Anthem Insurance Co. (Anthm IN), PO Box 50451, 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Arkansas B/C, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Group Health of Oklahoma, 1215 South Boulder, Tulsa, OK 74119–2827.

Medicare Coordinator, Trailblazer, PO Box 660156, Dallas, TX 75266–0156.

Medicare Coordinator, Cahaba GBA, Station 7, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/C, PO Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Nebraska B/C, PO Box 3248, Main PO Station, Omaha, NE 68180–0001.

Medicare Coordinator, Mutual of Omaha, PO Box 1602, Omaha, NE 68101.

Medicare Coordinator, Montana B/C, PO Box 5017, Great Falls Div., Great Falls, MT 59403–5017.

Medicare Coordinator, Noridian, 4510 13th Avenue SW., Fargo, ND 58121–0001.

Medicare Coordinator, Utah B/C, PO Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Wyoming B/C, 4000 House Avenue, Cheyenne, WY 82003.

Medicare Coordinator, Arizona B/C, PO Box 37700, Phoenix, AZ 85069.

Medicare Coordinator, UGS, PO Box 70000, Van Nuys, CA 91470–0000.

Medicare Coordinator, Regents BC, PO Box 8110 M/S D–4A, Portland, OR 97207–8110.

Medicare Coordinator, Premera BC, PO Box 2847, Seattle, WA 98111–2847.

IV. Medicare Carriers

Medicare Coordinator, NHIC, 75 Sargent William Terry Drive, Hingham, MA 02044.

Medicare Coordinator, B/S Rhode Island (RI BS), 444 Westminster Street, Providence, RI 02903–2790.

Medicare Coordinator, Trailblazer Health Enterprises, Meriden Park, 538 Preston Ave., Meriden, CT 06450.

Medicare Coordinator, Upstate Medicare Division, 11 Lewis Road, Binghamton, NY 13902.

Medicare Coordinator, Empire Medicare Services, 2651 Strang Blvd., Yorktown Heights, NY, 10598.

Medicare Coordinator, Empire Medicare Services, NJ, 300 East Park Drive, Harrisburg, PA 17106.

Medicare Coordinator, Triple S, #1441 F.D., Roosvelt Ave., Guaynabo, PR 00968.

Medicare Coordinator, Group Health Inc., 4th Floor, 88 West End Avenue, New York, NY 10023.

Medicare Coordinator, Highmark, PO Box 89065, 1800 Center Street, Camp Hill, PA 17089–9065.

Medicare Coordinator, Trailblazers Part B, 11150 McCormick Drive, Executive Plaza 3 Suite 200, Hunt Valley, MD 21031.

Medicare Coordinator, Trailblazer Health Enterprises, Virginia, PO Box 26463, Richmond, VA 23261–6463. United Medicare Coordinator, Tricenturion, 1 Tower Square, Hartford, CT 06183.

Medicare Coordinator, Alabama B/S, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Cahaba GBA, 12052 Middleground Road, Suite A, Savannah, GA 31419.

Medicare Coordinator, Florida B/S, 532 Riverside Ave, Jacksonville, FL 32202–4918.

Medicare Coordinator, Administar Federal, 9901 Linnstation Road, Louisville, KY 40223.

Medicare Coordinator, Palmetto GBA, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, CIGNA, 2 Vantage Way, Nashville, TN 37228.

Medicare Coordinator, Railroad Retirement Board, 2743 Perimeter Parkway, Building 250, Augusta, GA 30999.

Medicare Coordinator, Cahaba GBA, Jackson Miss, PO Box 22545, Jackson, MI 39225–2545.

Medicare Coordinator, Adminastar Federal (IN), 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Wisconsin Physicians Service, PO Box 8190, Madison, WI 53708–8190.

Medicare Coordinator, Nationwide Mutual Insurance Co., PO Box 16788, 1 Nationwide Plaza, Columbus, OH 43216–6788.

Medicare Coordinator, Arkansas B/S, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Arkansas-New Mexico, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Palmetto GBA–DMERC, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Trailblazer Health Enterprises, 901 South Central Expressway, Richardson, TX 75080.

Medicare Coordinator, Nordian, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/S, PO Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Kansas B/S–NE, PO Box 239, 1133 Topeka Ave., Topeka, KS 66629–0239.

Medicare Coordinator, Montana B/S, PO Box 4309, Helena, MT 59601.

Medicare Coordinator, Nordian, 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Noridian BCBSND (C0), 730 N. Simms #100, Golden, CO 80401–4730.

Medicare Coordinator, Noridian BCBSND (WY), 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Utah B/S, PO Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Transamerica Occidental, PO Box 54905, Los Angeles, CA 90054–4905.

Medicare Coordinator, NHIC—California, 450 W. East Avenue, Chico, CA 95926.

Medicare Coordinator, Cigna, Suite 254, 3150 Lakeharbor, Boise, ID 83703.

Medicare Coordinator, Cigna, Suite 506, 2 Vantage Way, Nashville, TN 37228.

V. Payment Safeguard Contractors

Medicare Coordinator, Aspen Systems Corporation, 2277 Research Blvd., Rockville, MD 20850.

Medicare Coordinator, DynCorp Electronic Data Systems (EDS, 11710 Plaza America Drive 5400 Legacy Drive, Reston, VA 20190–6017.

Medicare Coordinator, Lifecare Management Partners Mutual of Omaha Insurance Co. 6601 Little River Turnpike, Suite 300 Mutual of Omaha Plaza, Omaha, NE 68175.

Medicare Coordinator, Reliance Safeguard Solutions, Inc., PO Box 30207 400 South Salina Street, 2890 East Cottonwood Pkwy. Syracuse, NY 13202.

Medicare Coordinator, Science Applications International, Inc., 6565 Arlington Blvd., PO Box 100282, Falls Church, VA.

Medicare Coordinator, California Medical Review, Inc., Integriguard Division Federal Sector Civil Group, One Sansome Street, San Francisco, CA 94104–4448.

Medicare Coordinator, Computer Sciences Corporation, Suite 600 3120 Timanus Lane, Baltimore, MD 21244.

Medicare Coordinator, Electronic Data Systems (EDS), 11710 Plaza America Drive 5400 Legacy Drive, Plano, TX 75204.

Medicare Coordinator, TriCenturion, L.L.C., PO Box 100282, Columbia, SC 29202.

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BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0445]

FDA Regulation of Combination Products; Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing to discuss the assignment, premarket review, and postmarket regulation of combination products. Combination products (defined in more detail later in this document) are products containing a combination of drugs, devices, or biological products. These products often are novel and have significant potential to enhance the public health. The purpose of the hearing is to solicit information and views from interested persons on the issues and concerns relating to the assignment, premarket review, and postmarket regulation of combination products. FDA is proposing specific questions, and the agency is interested in responses to these questions and any other pertinent information stakeholders would like to share.

DATES: The public hearing will be held on November 25, 2002, from 9 a.m. to 5 p.m. Submit written or electronic notices of participation by close of business on November 8, 2002. Written and electronic comments will be accepted until January 24, 2003.

ADDRESSES: The public hearing will be held at the DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD. Directions to the hotel can be found at *http://www.doubletreerockville.com*.

Submit written or electronic notices of participation and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852; or e-mail FDADockets@oc.fda.gov; or on the Internet at *http://www.accessdata.fda.gov/scripts/oc/dockets/commentdocket.cfm*. Transcripts of the hearing will be available for review at the Dockets Management Branch (see address in previous sentence) and on the Internet at *http://www.fda.gov/ohrms/dockets*.

FOR FURTHER INFORMATION CONTACT: Mark D. Kramer, Combination Products Program (HF–7), Food and Drug Administration, 5600 Fishers Lane, rm. 14B–03, Rockville, MD 20857, 301–827–3390, FAX 301–480–8039, e-mail: *mkramer@oc.fda.gov*.

Registration Information and Requests for Oral Presentation

Preregistration by written notice is necessary to ensure participation. The procedures governing the hearing are found in part 15 (21 CFR part 15). To register to attend the hearing, submit your name, title, business affiliation, address, telephone, fax number, and e-mail address. If you wish to make an oral presentation during the open public comment period of the hearing, you must state your intention on your registration form or with the registration contact person listed (*see* **FOR FURTHER INFORMATION CONTACT**). You must submit a written statement at the time of registration for each discussion question you wish to address, the names and addresses of all individuals that plan to participate, and the approximate time requested to make your presentation. Electronic registration for this hearing is available at *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm*. Registrations will be accepted on a first-come, first-served basis. Individuals who register to make an oral presentation will be notified of the scheduled time for their presentation prior to the hearing. Depending on the number of presentations, FDA may need to limit the time allotted for each presentation. All participants are encouraged to attend the entire day. Presenters must submit two copies of each presentation given. If you need special accommodations due to a disability, please inform the registration contact person when you register. Presentations will be limited to the questions and subject matter identified in section III of this document.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Medical Devices Act (SMDA) of 1990 explicitly recognized the existence of products that ''constitute a combination of a drug, device, or biological product'' and provided a mechanism for determining which agency component would be assigned the administrative responsibility of regulating a particular combination product (21 U.S.C. 353(g)). The Food and Drug Administration Modernization Act of 1997 (FDAMA) further refined the assignment process by providing a mechanism to request that FDA classify a product as a drug, biological product, device, or a combination product, in addition to determining which agency component will be assigned to regulate the product (21 U.S.C. 360bbb–2).

As defined in § 3.2(e) (21 CFR 3.2(e)), the term combination product means a product comprised of two or more different regulated components, e.g., drug, device, or biologic (for example, a syringe prefilled with a drug); or two or more separate products packaged together as one unit (for example, a kit containing drapes, needles, a syringe, a local anesthetic and a topical antiseptic). A combination product is also defined to include a product that is intended for use only with an approved product where both are required to achieve the intended use, indication, or effect, and the labeling of the approved product needs to be changed to reflect this use. For example, if a device to aerosolize medication works only with a specific aerosolized drug, the device would be labeled for use with this drug and the two products would be a combination product. Finally, the combination product definition

includes any investigational product that is intended to be used only with another investigational product where both are required to achieve the intended use, indication, or effect.

In accordance with section 503(g)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 353(g)(l)), the agency is required to assign premarket review responsibility for combination products based on the product's ''primary mode of action.'' The designation of an agency component does not preclude consultations with other agency components, and when such consultation is used, the involvement of more than one center in the premarket review process presents unique challenges in review management. In addition, where the agency finds it is appropriate, the agency reserves the option to require separate applications to be approved (by either the lead center or separate agency components) for the individual components of a combination product. FDA recognizes that requiring the approval of a second agency component may present additional issues for the applicant and in those instances strives to coordinate the reviews to the greatest extent possible.

A number of issues have been raised regarding FDA's regulation of combination products. These include concerns about the consistency, predictability, and transparency of the assignment (jurisdiction) process; issues related to the management and timeliness of the review process when two (or more) FDA centers have review responsibilities for a combination product; lack of clarity about the postmarket regulatory controls applicable to combination products; and the lack of clarity regarding certain agency policies, such as when applications to more than one agency component are needed.

FDA recognizes the need to have policies and procedures that will ensure the efficient and effective review and regulation of combination products, and has established a Combination Products Program within the Office of the Ombudsman to provide support to the Centers for these activities. In addition to serving as a point of contact for industry and the FDA centers on combination products issues, the Combination Products Program is working with the centers to develop a variety of initiatives to improve the review and regulation of combination products. These initiatives include the development of standard operating procedures to improve the management of the intercenter review process, centralized monitoring of the progress of premarket reviews of combination products, and the development of guidance on policy issues that relate to combination products.

II. Purpose and Scope of the Hearing

The agency recognizes the importance of protecting the public health by facilitating the introduction of safe and effective new products. New technologies and products that result from the combination of components that would otherwise be regulated under different regulatory authorities raise not only unique scientific questions, but also regulatory challenges related to where and how such products should be regulated in order to ensure adequate and consistent regulatory oversight.

FDA is calling this meeting to discuss the agency's processes for the assignment, premarket review, and postmarket regulation of combination products in general. The meeting is another step in the agency's continuing effort to elicit information helpful to the refinement of the agency's policies on combination products, and will build upon the June 24, 2002, part 15 hearing held to discuss the assignment and premarket review of wound healing products comprised of living human cells in combination with a device matrix. The hearing is limited to discussion of combination products as defined in § 3.2(e). Combinations of two devices, two drugs, or two biologics are not considered combination products under § 3.2(e) and are beyond the scope of this meeting. Discussion of the assignment of specific types of combination products, or of premarket review or testing requirements for specific products, is also beyond the scope of the meeting. Examples of issues raised for particular products may, however, be appropriate for illustration purposes.

III. Issues for Discussion

Combination products often involve cutting edge, novel technologies that raise unique scientific, technical, policy and regulatory issues. Multi-center responsibility for the premarket review and regulation of combination products creates special challenges with respect to both the scientific and administrative aspects of review management. In addition, the combination of components that would normally be regulated under different regulatory authorities introduces additional factors to consider in the formulation of appropriate regulatory requirements. FDA recognizes the need to have policies and procedures that will ensure the efficient and effective review and regulation of combination products, and is holding this meeting to obtain stakeholders' views on the issues raised by, and suggestions for, the review and regulation of combination products.

To assist in the development of consistent policies on assignment of these products and appropriate premarket and postmarket regulatory policies, the agency invites information and comments on the issues and questions listed in the next section of this document.

A. Assignment and Intercenter Agreements

Issue:

One goal of FDA's regulatory process has been the establishment of a credible, consistent and predictable (''transparent'') framework for the assignment and review of human drugs, biologics, and devices to the appropriate centers. Prior to 1991, confusion over product jurisdiction was a frequently cited complaint by regulated industry.

As described in section I of this document, SMDA required that FDA assign combination products to the FDA components based on the product's primary mode of action. Furthermore, in 1991, the Center for Biologics Evaluation and Research (CBER), the Center for Devices and Radiological Health (CDRH), and the Center for Drug Evaluation and Research (CDER) developed working agreements (''Intercenter Agreements'') addressing the assignment and regulatory pathways for specified products or classes of products, including some types of combination products. The Agreements identify the lead center that will be responsible for regulating particular types of products, and in some instances, the applicable regulatory authority. While the Intercenter Agreements continue to provide useful guidance, the evolution in technology and scientific knowledge about the mode of action of medical products has in some cases pushed the usefulness of the current Intercenter Agreements past their limits. FDA recognizes the need to revise and update the Intercenter Agreements to reflect decisions made since 1991 and an appropriate division of labor among the centers.

Stakeholders have voiced concern about a perceived lack of consistency in the assignment of combination products. This perception is sometimes attributed to potential differences in the interpretation of a combination product's ''primary mode of action,'' a term that is not defined in the statute. The assignment process may also appear to be inconsistent if two products that appear to be similar in nature are

assigned to different centers based on differences in their primary mode of action. When review responsibility for particular products of a given type is split between two centers, it may lead to inconsistencies in the type of premarket regulatory authorities applied, review policies, postmarket regulatory controls, and other factors relevant to product regulation.

Another complaint frequently cited about the assignment of combination products is the lack of transparency. In an effort to keep stakeholders apprised of significant jurisdictional decisions, FDA has begun to post a series of ''jurisdictional updates'' on its Combination Products Web site *http://www.fda.gov/oc/ombudsman/combination.html*. These jurisdictional updates report prior agency decisions only and are not policy statements. In determining whether Web publication of a jurisdictional update is appropriate for a product, FDA will take into account the current level of interest in the jurisdictional issue, the extent to which the class of products can be clearly described, the extent to which the existence and description of the class of products has been made public, and related factors. In cases where it is not possible to adequately describe the subject of a jurisdictional decision and still protect confidential and trade secret information, jurisdictional updates will not be available.

Questions:

1. What types of guiding scientific and policy principles should FDA use in its revisions to the existing Intercenter Agreements that allocate review responsibility for human medical products?

2. What factors should FDA consider in determining the primary mode of action of a combination product? In instances where the primary mode of action of the combination product cannot be determined with certainty, what other factors should the agency consider in assigning primary jurisdiction? Is there a hierarchy among these additional factors that should be considered in order to ensure adequate review and regulation (e.g., which component presents greater safety questions)?

B. Marketing Applications

The SMDA required that the primary mode of action of a combination product must determine which FDA center would be responsible for premarket review, but did not address which authorities, including which type of marketing application, should be used to review the combination product, beyond authorizing FDA to use any resources necessary to ensure an adequate premarket review. The selection of regulatory authorities to be applied to a combination product is intended to ensure appropriate review and regulation, but may also affect the potential for generic competition and the availability of certain regulatory mechanisms or processes (e.g., a device component of a combination product regulated solely under the new drug application (NDA) or biological license application (BLA) authorities would not be eligible for reclassification or review under section 510(k) of the act premarket notification).

As stated in 21 CFR 3.4(b), FDA may require separate applications for the different components of a combination product (''The designation of one agency component as having primary jurisdiction for the premarket review and regulation of a combination product does not preclude consultations by that component with other agency components or, in appropriate cases, the requirement by FDA of separate applications.''). This flexibility is important because the most appropriate regulatory approach for a given combination product may need to be tailored to the associated scientific and policy issues. Some applicants have questioned the need for separate marketing applications for the components of a combination product, perhaps based on the perception that the regulatory burden would be less with a single application. On the other hand, some applicants have objected to FDA's decision to require only a single application because separate applications were considered to be advantageous for future development and/or marketing opportunities. While no single approach is universally preferred or most appropriate from a regulatory perspective, the agency recognizes that it is important to have established criteria for determining whether one application or two would be more appropriate.

Questions:

3. What are the general scientific and policy principles that should be followed in selecting the premarket regulatory authorities to be applied to combination products? Is one premarket review mechanism (e.g., premarket approval (PMA), premarket notification (510(k)), new drug application (NDA), or biologic licensing application (BLA)) more suitable than another for regulating combination products?

4. Recognizing the need to ensure product safety and effectiveness, what criteria should FDA use to determine whether a single application or separate applications for the individual components would be most appropriate for regulation of a combination product? For example, FDA may determine that it is necessary to apply elements of different regulatory authorities to a combination product to ensure safety and efficacy (e.g., device postmarketing reporting for the combination product, with drug current good manufacturing practices (CGMPs) applicable to the drug component only). Should the need to apply a mixed regulatory approach influence whether one application or two are more appropriate?

C. Other Issues

Issues:

Combination products sometime raise concerns about safety and effectiveness, or risks to the public health, arising specifically from the combination nature of the product. The agency may draw from the statutory and regulatory authorities applicable to all components of the combination product in order to ensure adequate review of the safety and effectiveness of a product. For example, a drug-coated device may be subject to the device Quality Systems Regulation for the device component, to drug good manufacturing practices (GMPs) for the drug coating, and to a mix of requirements, as appropriate, for the combined product.

While this flexibility is appropriate to enable FDA to best promote and protect public health and address unique issues arising from the combination of two products that would otherwise be separately regulated, stakeholders have complained that there is a lack of consistency, predictability, and transparency in the application of postmarket requirements for such products. Since manufacturers must design their manufacturing and quality systems for the types of products they produce, an applicant that primarily manufacturers devices, for example, may not have the systems in place to manufacture a drug-coated device that will be subject to drug GMPs. Similarly, applicants report confusion in deciding which adverse event monitoring regulations to follow for a combination product. Applicants report that reporting to multiple centers has been required in some cases, and is duplicative and unnecessary.

Questions:

5. What scientific and policy principles should be followed in determining the appropriate manufacturing and quality system regulatory authorities (e.g., Current

Good Manufacturing Practices versus Quality System Regulation) applicable to combination products?

6. What scientific and policy principles should be followed in determining the appropriate adverse event reporting requirements (e.g., the drugs and biologics adverse event reporting system, Medical Device Reporting) to be applied to a combination product?

7. What other comments do you have concerning other issues related to FDA regulation of combination products? (Examples may include cross labeling of products intended to be used together, though manufactured by different companies; and application of promotion and advertising policies to combination products.)

IV. Notice of Hearing Under Part 15

The Commissioner of Food and Drugs (the Commissioner) is announcing that the public hearing will be held in accordance with part 15. The hearing will have a presiding officer, who will be accompanied by senior management from CBER, CDER, CDRH, and the agency's Combination Products Program.

Persons who wish to participate in the part 15 hearing must file a written or electronic notice of participation with the Dockets Management Branch (see **ADDRESSES**). To ensure timely handling, any outer envelope should be clearly marked with the docket number listed at the head of this notice along with the statement ''Combination Products Hearing.'' Groups should submit two written copies. The notice of participation should contain the person's name; address; telephone number; affiliation, if any; the sponsor of the presentation (e.g., the organization paying travel expenses or fees), if any; a brief summary of the presentation (including the specific discussion questions that will be addressed); and approximate amount of time requested for the presentation. The agency requests that interested persons and groups having similar interests consolidate their comments and present them through a single representative. After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. If time permits, FDA may allow interested persons attending the hearing who did not submit a written or electronic notice of participation in advance to make an oral presentation at the conclusion of the hearing. The hearing schedule will be available at the hearing. After the hearing, the hearing schedule will be placed on file in the Dockets Management Branch under the docket number listed at the head of this notice.

Under § 15.30(f), the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation.

Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10, subpart C (21 CFR part 10, subpart C)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). The transcript of the hearing will be available on the Internet at *http://www.fda.gov/ohrms/dockets*, and orders for copies of the transcript can be placed at the meeting or through the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Any handicapped persons requiring special accommodations to attend the hearing should direct those needs to the contact person (see **FOR FURTHER INFORMATION CONTACT**).

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

V. Request for Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic notices of participation and comments for consideration at the hearing. To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open following the hearing. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (see **ADDRESSES**). You should annotate and organize your comments to identify the specific questions to which they refer (see section III of this document). Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number at the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Transcipts of the hearing also will be available for review at the Dockets Management Branch.

VI. Electronic Access

Persons with access to the Internet may obtain more information about this hearing or combination products in general at *http://www.fda.gov/oc/ombudsman/combination.html*.

Dated: October 18, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–27267 Filed 10–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of 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 a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: November 19, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To discuss the next steps for the DCLG with Dr. von Eschenbach and to get an update on the CARRA program.

Place: 6166 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Elaine Lee, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Bethesda, MD 20892, 301/594–3194.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the

record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm*, where an agenda and any additional information for the meeting will be posted when available.

(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 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27404 Filed 10–25–02; 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 section 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 Initial Review Group Subcommittee H—Clinical Groups.

Date: December 5–6, 2002.

Time: 1 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Philadelphia Airport, One Arrivals Road, Philadelphia, PA 19153.

Contact Person: Deborah R. Jaffee, PhD., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8038, MSC 8328, Bethesda, MD 20892, (301) 496–7721, *dj86k@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 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27405 Filed 10–25–02; 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 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Obesity and Nutrition Research Centers.

Date: December 3–4, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 758, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(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)

Dated: October 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27399 Filed 10–25–02; 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, Research Career Award for Transition to Independence.

Date: November 15, 2002.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608, 301–443–1178, *benxu1@mail.nih.gov.*

Name of Committee: National Institutes of Mental Health Special Emphasis Panel, T32 Services and Interventions Applications.

Date: November 25, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC 9606, Bethesda, MD 20892–9606, 301–443–1225, *rweise@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)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27400 Filed 10–25–02; 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 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 Mental Health Special Emphasis Panel Refugee Mental Health.

Date: November 14, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.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.

(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 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27401 Filed 10–25–02; 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 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 Mental Health Special Emphasis Panel NSAL.

Date: December 2, 2002.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@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 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27402 Filed 10–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

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 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 Child Health and Human Development Special Emphasis Panel Biochemical and Genetic Factors in Birth Defects and Other Adverse Pregnancy Outcomes.

Date: November 5, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd., DSR Conf. Rm., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

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.

(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. 02–27403 Filed 10–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

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 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 Letter of Invitation.

Date: November 20, 2002.

Time: 9 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Boulevard, 5th Floor Conference Room, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908.

(Catalog 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 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27406 Filed 10–25–02; 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, Transcription Factors in Myelodysplastic Syndromes.

Date: October 30, 2002.

Time: 3 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverse@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, Endocrinology, Metabolism, Nutrition, & Reproductive Sciences.

Date: November 7, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–1041.

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, AIDS Opportunistic Infections SEP.

Date: November 8, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.

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: Oncological Sciences Integrated Review Group, Clinical Oncology Study Section.

Date: November 10–12, 2002.

Time: 2 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham San Diego at Emerald Plaza, 400 West Broadway, San Diego, CA 92101.

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

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, Oral Biology and Medicine Subcommittee 2.

Date: November 11–12, 2002.

Time: 7:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Ave, North West, Washington, DC 20037.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

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, Member Conflict: Psycholinguistics.

Date: November 11, 2002.

Time: 11 AM to 12 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

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, Women's Mental Health.

Date: November 11, 2002.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffrey W. Elias, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *eliasj@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 3.
Date: November 12–13, 2002.
Time: 8 AM to 11 AM.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency, Chesapeake Suites, One Bethesda Metro Center, Bethesda, MD 20814.
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 02—HIV Vaccine R21 applications.
Date: November 12, 2002.
Time: 8:30 a.m. to 9:30 a.m.
Agenda: To review and evaluate grant applications.
Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1BM1(01): Small Grant (R03, R15 & R21) Microbiology Applications.
Date: November 12, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Four Points Sheraton, 8400 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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Radiation Biology and Medical Physics.
Date: November 12, 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: Shen K. Yang., PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, (301) 435–1213, *yangsh@sr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hematology Subcommittee 2.
Date: November 12–13, 2002.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jerrold Fried, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892–7802, 301–435–1777, *friedj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Reviews in Psychopathology and Adult Disorders.
Date: November 12, 2002.
Time: 9 a.m. to 10 a.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, Washington, DC 20037.
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.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 03—Innovation Grants: HIV Vaccines.
Date: November 12, 2002.
Time: 9:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Psychopathology and Adult Disorders.
Date: November 12, 2002.
Time: 10 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, Washington, DC 20037.
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.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BDCN 2 04; Spinal Cord injury.
Date: November 12, 2002.
Time: 10 a.m. to 10:45 a.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Sherry L. Stuesses, PhD., Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cognition and Neuroimaging.
Date: November 12, 2002.
Time: 1:10 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–T 01: Quorum: Endorcine and Reproductive Science.
Date: November 12, 2002.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Krish Krishnan, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1401.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 UROL 01: Urology.
Date: November 12–13, 2002.
Time: 2 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG SSS X 11B: Small Business: Electromagnetics.
Date: November 12, 2002.
Time: 2:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F03A (20) MDCN Fellowship Review Group A.
Date: November 13–14, 2002.
Time: 8:00 AM to 4:30 PM.
Agenda: To review and evaluate grant applications.
Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.
Contact Person: Michael Nunn, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1257.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to review SBIR applications.
Date: November 13, 2002.
Time: 8:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 11–Small Business: Viral Vaccines.

Date: November 13, 2002.

Time: 8:30 AM to 10:00 AM.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Occupational Safety and Health.

Date: November 13, 2002.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Charles N. Rafferty, PhD, NIOSH Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–3562, *raffertc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Demographic Small Business.

Date: November 13, 2002.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 01—Vaccines of Infectious Diseases.

Date: November 13–14, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications, The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel, DNA Repair.

Date: November 13, 2002.

Time: 1 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: 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, Cancer Therapy.

Date: November 13, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718, *perkins@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 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27397 Filed 10–25–02; 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 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: Center for Scientific Review Special Emphasis Panel, BDCN–4 (01).

Date: October 24–25, 2002.[1]

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW. Washington, DC 20037.

Contact Person: Jay Joshi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

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.

(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 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27398 Filed 10–25–02; 8:45 am]

BILLING CODE 4140–01–M

[1] Editorial Note: This document was received at the Office of the Federal Register on October 23, 2002.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–00–1020–24]

Sierra Front-Northwestern Great Basin Resource Advisory Council; Notice of 2003 Meetings Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of 2003 Meetings Locations and Times for the Sierra Front-Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), meetings of the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion at each meeting will include, but are not limited to: January 28–29, 2003 (Carson City, Nevada)—RAC review and recommendations on the Walker River Basin EIS, report on national wild horse & burro program status, field trip to the proposed National Wild Horse & Burro Adoption/Visitor Center site off U.S. Highway 50 in Moundhouse, Nevada; April 24–25, 2003 (Reno, Nevada)—official action on Black Rock NCA including subcommittee review and a possible ½-day session with NE California RAC, status of Nevada counties wilderness package development, and status of prescribed fire & wildland fire planning projects in

the Carson City and Winnemucca Field Offices; and July 24–25, 2003 (Winnemucca, Nevada)—RAC review of Pine Nut Mountain Plan Amendment EIS, Sage Grouse program review and inspection of fire rehabilitation sites including an overnight camping trip in the Winnemucca Field Office area. Manager's reports of field office activities will be given at each meeting. The council may raise other topics at any of the three planned meetings.

DATES AND TIMES: The RAC will meet three times in 2003 on January 28–29 (Tuesday & Wednesday), at the BLM–Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada; on April 24–25 (Thursday & Friday), at the BLM–Nevada State Office, Great Basin A&B Conference Room, 1340 Financial Blvd., Reno, Nevada; and on July 24–25 (Thursday & Friday), at the BLM–Winnemucca Field Office, 5100 E. Winnemucca, Blvd., Winnemucca, Nevada. All meetings and field trips are open to the public. Each meeting will last from 8 a.m. to 4 p.m., plus, a general public comment period, where the public may submit oral or written comments to the RAC, will be at 11 a.m. on the first day of each meeting, unless otherwise listed in each specific, final meeting agenda.

Final detailed agendas, with any additions/corrections to agenda topics, locations, field trips and meeting times, will be available on the Internet at least 14 days before each meeting, at *www.nv.blm.gov/rac*; hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of each agenda, should contact Mark Struble, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107 no later than 10 days prior to each meeting.

FOR FURTHER INFORMATION CONTACT: Mark Struble, Public Affairs Officer, BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone: (775) 885–6107. E-mail: *mstruble@nv.blm.gov*

Dated: October 23, 2002.

John O. Singlaub,

Field Manager, Carson City Field Office.

[FR Doc. 02–27314 Filed 10–25–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Death Valley National Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: This notice sets forth the date of the November 13, 2002 meeting of the Death Valley National Park Advisory Commission.

DATES: The public meeting will be held on November 13, 2002 from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Death Valley National Park Visitor Center Auditorium, Highway 190, Death Valley, California.

FOR FURTHER INFORMATION CONTACT: James T. Reynolds, Death Valley National Park, P.O. Box 579, Death Valley, California 92328.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Death Valley National Park Advisory Commission, PO Box 579, Death Valley, California 92328.

Agenda: The November 13, 2002 meeting will consist of Operational Updates on Park Activities which include Fee Demo Program Outsourcing; Barrick Administrative Site Donation; California Desert Parks Foundation update; Comprehensive Interpretive Plan update; a review of Fee Demo Projects; Environmental Audit briefing; Yucca Mountain Project update; Exotic Plant Removal project update; Wilderness Boundary update; Grazing issues update; Timbisha Shoshone Tribe update; an update on the Furnace Creek Environmental Impact Statement and related water issues; and a Citizens Open Forum where the public can make comments and ask questions on any park activity.

Dated: September 30, 2002.

James T. Reynolds,

Superintendent.

[FR Doc. 02–27247 Filed 10–25–02; 8:45 am]

BILLING CODE 4310–70–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506 as follows:

Local Arts Agencies: November 13–14, 2002, Room 716 (Access and Heritage & Preservation categories). A portion of this meeting, from 10:45 a.m. to 12 p.m. on November 14th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5 p.m. on November 13th and from 9 a.m. to 10:45 a.m. and 12 p.m. to 1:15 p.m. on November 14th, will be closed.

Dance: November 13–15, 2002, Room 730 (Access and Heritage & Preservation categories). A portion of this meeting, from 9:30 a.m. to 10:30 a.m. on November 15th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on November 13th and 14th and from 10:30 a.m. to 2 p.m. November 15th, will be closed.

Theater/Musical Theater: November 18–21, 2002, Room 730 (Access and Heritage & Preservation categories). A portion of this meeting, from 3:15 p.m. to 4:45 p.m. on November 20th, will be open to the public for policy discussion. The remaining portions of this meeting, from 10 a.m. to 6 p.m. on November 18th and 19th, from 10 a.m. to 3:15 p.m. and 4:45 p.m. to 6 p.m. on November 20th, and from 10 a.m. to 2:30 p.m. on November 21st, will be closed.

Visual Arts: November 19–20, 2002, Room 716 (Access and Heritage & Preservation categories). A portion of this meeting, from 2 p.m. to 2:45 p.m., will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on November 19th and from 9 a.m. to 2 p.m. and 2:45 p.m. to 4:30 p.m. on November 20th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate

in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Accessability, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: October 22, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–27321 Filed 10–25–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel; Notice of Change

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the time of the open session of the Combined Arts Advisory Panel, Music Section (Access and Heritage & Preservation categories) has been changed. This session will be held from 11 a.m. to 12:30 p.m., rather than 2 p.m. to 3:30 p.m., on November 22, 2002, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

Dated: October 22, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–27322 Filed 10–25–02; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on November 7–9, 2002, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 26, 2001 (66 FR 59034).

Thursday, November 7, 2002

8:30 a.m.–8:35 a.m.: Opening Statement by the ACRS *Chairman*— The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Proposed Resolution of Generic Safety Issue (GSI)–189, ''Susceptibility of Ice Condenser and Mark III Containments to Early Failure From Hydrogen Combustion During a Severe Accident'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on the results of their additional analyses and proposed recommendations for resolving GSI–189.

10:15 a.m.–11:45 a.m.: Early Site Permit Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Early Site Permit Process.

11:45 a.m.–12:15 p.m.: Peach Bottom License Renewal Application (Open)—Report by the Subcommittee Chairman regarding the October 30, 2002 Plant License Renewal Subcommittee meeting on the license renewal application for the Peach Bottom Nuclear Plant Units 2 and 3.

1:15 p.m.–3:15 p.m.: Westinghouse AP1000 Design (Open)—The Committee will hear presentations by and hold discussions with representatives of Westinghouse regarding the design features of, and test information on, the AP1000 design. The NRC staff will provide a status report regarding its review schedule.

3:30 p.m.–5 p.m.: Risk-Informed Improvements to Standard Technical Specifications (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding staff's progress on risk-informed improvements to Standard Technical Specifications and related matters.

5:15 p.m.–6 p.m.: Report Regarding Recent Operating Events (Open)—The Committee will hear a report by the Cognizant ACRS member regarding recent operating events of interest.

6 p.m.–7 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, November 8, 2002

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–12 Noon: Organizational and Personnel Matters (Closed)—The Committee will discuss organizational and personnel matters as well as the potential improvements to internal ACRS policies and procedures.

Note: This session will be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.)

1 p.m.–4 p.m.: Safeguards and Security Activities (Closed)—(This session will be held in room T–8E8.) The Committee will hear a report by the cognizant Subcommittee Chairman regarding matters discussed at the October 31, 2002 meeting of the ACRS Subcommittee on Safeguards and Security. In addition, the Committee will discuss the content of a proposed report to the Commission on Safeguards and Security matters.

Note: This session will be closed pursuant to 5 U.S.C. 552b(c)(1) to protect national security information.)

4:15 p.m.–5 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

5 p.m.–5:15 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

5:30 p.m.–7 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, November 9, 2002

8:30 a.m.–10 a.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

10:15 a.m.–12:15 p.m.: Annual ACRS Report on the NRC Safety Research Program (Open)—The cognizant Subcommittee Chairman will report on matters discussed at the November 6, 2002 Safety Research Program

Subcommittee meeting, and the Committee will discuss a draft ACRS report to the Commission on the NRC Safety Research Program.

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63460). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy, *per* 5 U.S.C. 552b(c)(2) and (6), and to protect national security information *per* 5 U.S.C. 552b(c)(1).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur, Associate Director for Technical Support (301–415–0138), between 7:30 a.m. and 4:15 p.m., ET.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: October 22, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–27335 Filed 10–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena (GSI–189); Revised

The starting time for the ACRS Subcommittee meeting on Thermal-Hydraulic Phenomena (GSI–189) scheduled for November 5, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland has been changed from 8:30 a.m. *to 1:30 p.m.*

For further information contact: Ms. Maggalean W. Weston (telephone 301–415–3151) between 7:30 a.m. and 5:00 p.m. (EDT).

Dated: October 18, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–27336 Filed 10–25–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 64940, October 22, 2002]

STATUS: Open meeting

PLACE: 450 Fifth Street, NW., Washington, DC

ANNOUNCEMENT OF OPEN MEETING: Open meeting.

The Commission will hold an Open Meeting on Friday, October 25, 2002 at 2:30 p.m., in Room 1C30, the William O. Douglas Room, to consider appointments to the Public Company Accounting Oversight Board.

The Commission (Chairman Pitt, Commissioners Glassman, Goldschmid, Atkins and Campos) determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 24, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–27483 Filed 10–24–02; 12:30 pm]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46702; File No. SR–Amex–2002–47]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 by the American Stock Exchange LLC Relating to Non-Member Fees for Transactions in Nasdaq Securities Traded on an Unlisted Basis

October 22, 2002.

On June 3, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] Amex filed Amendment No. 1 on June 11, 2002,[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from William Floyd-Jones, Assistant General Counsel, Amex, to Katherine England, Esq.,

and Amendment No. 2 on August 27, 2002.[4] The proposed rule change, as amended, was noticed in the **Federal Register** on September 17, 2002.[5] On October 3, 2002, Amex filed Amendment No. 3 to the proposed rule change.[6] The Commission is publishing this notice to approve the proposed rule change, as amended, and solicit comments on Amendment No. 3 from interested persons.[7]

I. Description

The Amex proposes to adopt transaction fees for non-member trades in The Nasdaq Stock Market, Inc. (''Nasdaq'') securities admitted to dealings on an unlisted basis. Accordingly, the Exchange is implementing a separate fee schedule for transactions in Nasdaq securities admitted to dealings so that the Amex can be competitive with other market centers that trade Nasdaq securities. According to the Exchange, the proposed fees are in line with similar fees charged by other market centers for transactions in Nasdaq securities.

II. Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)[9] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities. The Amex will assess the same fees to both members and non-members equally. The Commission also finds good cause for approving proposed Amendment No. 3 prior to the thirtieth day after the date for publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 will permit the Amex to begin to assess the proposed non-member transaction fees as of the trade date October 1, 2002, so that these fees will begin to be assessed at the same time as the Exchange begins to assess its member transaction fees.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 of the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–47 and should be submitted by November 18, 2002.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–2002–47), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27350 Filed 10–25–02; 8:45 am]

BILLING CODE 8010–01–P

Assistant Director, Office of Market Supervision (''Market Supervision''), Commission (June 10, 2002).

[4] *See* letter from William Floyd-Jones, Assistant General Counsel, Amex, to Katherine England, Esq., Assistant Director, Market Supervision, Commission (Aug. 26, 2002).

[5] *See* Securities and Exchange Act Release No. 46483 (Sept. 10, 2002), 67 FR 58658 (Sept. 17, 2002).

[6] Amex filed Amendment No. 3 to provide that the Amex will begin to assess the proposed non-member transaction fees as of the trade date October 1, 2002. *See* letter from William Floyd-Jones, Assistant General Counsel, Amex, to Katherine England, Esq., Assistant Director, Market Supervision, Commission (October 1, 2002) (''Amendment No. 3'').

[7] SR–Amex–2002–59 implements these same fees for members. *See* Securities Exchange Act Release No. 46484 (Sept. 10, 2002), 67 FR 58659 (Sept. 17, 2002).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46697; File No. SR–CHX–2002–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Automatic and Manual Execution Procedures

October 21, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on September 13, 2002, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The proposed rule change has been filed by the CHX as a ''non-controversial'' rule change under Rule 19b–4(f)(6)[3] under the Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, Rule 37 of the CHX Rules to clarify the provisions that govern the approval necessary to switch from manual to automatic execution of orders.

Below is the text of the proposed rule change. Proposed new language is *italicized.* Proposed deletions are in [brackets].

Chicago Stock Exchange Rules

* * * * *

Article XX

* * * * *

Guaranteed Execution System and Midwest Automated Execution System

Rule 37

(a) No change to text.

(b) No change to text.

(1)–(7) No change in text.

[(8) In unusual trading situations, specialists may switch from automatic execution to a manual execution mode at their respective posts. With respect to specialists trading Nasdaq issues, ''manual execution mode'' shall include any instance in which a specialist

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

reduces the auto-execution threshold below the minimum set forth in Rule 37(b)(1) of this Article. For purposes of this subsection (8), ''unusual trading situations'' for NASDAQ/NM issues include the existence of large order imbalances and/or significant price volatility. If a specialist elects to switch to a manual execution mode based on the existence of unusual trading situations, such specialist (A) must document the basis for election of a manual execution mode; (B) must disclose to its customers the differences in procedures from normal market conditions and the circumstances under which the specialist generally may activate these procedures; and (C) must seek relief from the requirements of MAX from two (2) floor officials or a designated member of the Exchange staff who would have authority to set execution prices.]

[(9)]*(8)* No change to text.

[(10)]*(9)* No change to text.

[(11)]*(10)* No change to text.

[(12)]*(11)* No change to text.

* * * * *

* * * Interpretations and Policies:

.01–.03 No change to text.

.04 Ability to Switch MAX to Manual Execution.

Effective April 4, 1994. Specialists have the ability to switch their MAX terminals off automatic execution at their respective posts. [This new functionality is being implemented to allow specialists to timely switch to a manual execution mode when a certain analyst/reporter's report is broadcast on cable T.V., if market conditions in a particular stock warrant it. Specialists should switch to manual mode only when absolutely necessary and are required to return to the automatic execution functionality immediately when the primary market quotes accurately reflect market conditions. A specialist cannot remain in manual mode, under this paragraph, for more than five minutes without securing the permission of two (2) floor officials.]

Reasons for moving to manual execution mode. Specialists trading listed securities may use the procedures described below to switch to manual execution mode when the primary market quotes are inaccurate due to market conditions. For example, this functionality might be used if it became apparent that the NYSE invoked its unusual market conditions rule (pursuant to SEC Rule 11Ac1–1). This functionality cannot be used merely because of a volatile market.

Specialists trading Nasdaq/NM securities may use the procedures described below to switch to manual execution mode in unusual trading situations. With respect to specialists trading Nasdaq/NM securities, ''manual execution mode'' shall include any instance in which a specialist reduces the auto-execution threshold below the minimum set forth in Rule 37(b)(1) of this Article. For purposes of this paragraph, ''unusual trading situations'' include the existence of large order imbalances and/or significant price volatility.

Procedures for switching to manual execution mode. [In all other instances, w] *When* a specialist believes it is necessary to be in a manual execution mode, he or she must secure the permission of his/her firm's floor supervisor (who, under normal circumstances should be located on the trading floor) before switching to manual, and the firm supervisor must immediately (but in no event more than three minutes after switching to manual mode) notify and secure the permission of a floor official to remain in manual mode. [This new functionality cannot be used merely because of a volatile market, but shall only be permitted when the primary market quotes are inaccurate due to market conditions. For example, this new functionality might be used if it became apparent that the NYSE invoked its unusual market conditions rule (pursuant to SEC Rule 11Ac1–1).] The floor official must be satisfied that the conditions which permit putting an issue on manual mode are present before granting a specialist's request to switch to the manual mode and such permission shall only be in effect for five minutes. A firm's floor supervisor shall monitor the conditions which formed the basis for the decision to ensure that specialists return to the auto-execution feature when such conditions are no longer present. Both the firm's floor supervisor and the specialist have the responsibility, and are required, to immediately reinstate MAX's automatic execution functionality when [the primary market quotes accurately reflect market conditions] *market conditions no longer support the decision to move to manual execution mode.* If the specialist and the firm's floor supervisor believe it is necessary to continue in manual mode for longer than five minutes, then the firm supervisor must again secure the permission of the floor official who granted the initial permission, and if such floor official is not available, then from another floor official. Reasons for going to manual mode, the time spent in manual mode, the name of the firm supervisor who permitted the specialist to switch to manual mode and the name of the floor official who granted permission to go to manual mode must be documented and filed with the market regulation department before the next business day's opening.

When operating in the manual mode. Specialists still have the responsibility to fill customer orders according to CHX Rules—including the BEST Rule. All pricing executions will be reviewed for accuracy. This capability should only be utilized on an infrequent basis and only in unusual circumstances.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In October, 2001, the Exchange's Board of Governors approved changes to the procedures that a specialist must follow when switching from automatic to manual execution mode, intending that the changes would apply to specialists trading both listed and OTC securities. Among other things, these changes required the floor supervisor of a specialist firm to approve any switch to manual execution mode before it occurred and to promptly seek floor official approval of that change. Additionally, the amended language made it clear that the firm's floor supervisor was responsible for filing documentation with the Market Regulation Department about each change. Finally, the modified text confirmed that floor official permission to operate in manual execution mode expired after a limited time period; after five minutes, the specialist firm and its floor supervisor were again required to seek permission to remain in manual execution mode. The CHX filed this proposed rule change with the Commission on November 14, 2001; the

Commission approved the proposed rule change on April 17, 2002.[4]

Because of a staff oversight, however, the changes made by the Exchange's earlier proposal only impacted listed specialists. This submission would extend the same requirements to specialists trading over-the-counter (''OTC'') securities and consolidate the rule provisions relating to this issue for easier reference.[5]

As with the Exchange's earlier filing, the Exchange anticipates that these rule changes will promote greater accountability and preclude reliance on manual execution mode in a manner that is potentially violative of CHX rules. They also will assist the Market Regulation Department in determining more easily whether violations of the Exchange's rules regarding manual execution mode have occurred.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[6] In particular, the Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change[8] has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The CHX seeks to have the proposed rule change become operative upon filing in order to more quickly implement these procedures and thus require all of its specialists—those trading both OTC and listed securities—to use identical procedures when changing from automatic execution mode to manual execution mode.

The Commission, consistent with the protection of investors and the public interest, designates the proposal to be operative as of September 13, 2002.[11] Acceleration of the operative date of the proposed rule change will allow the CHX to quickly harmonize the procedures the specialist follows when switching from automatic execution mode to manual execution mode for listed and Nasdaq securities.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–15 and should be submitted by November 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27299 Filed 10–25–02; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Securities Exchange Act Release No. 45770 (April 17, 2002), 67 FR 19784 (April 23, 2002) (SR–CHX–2001–26).

[5] The proposal deletes language from the rule that allows a listed specialist to switch to manual execution mode when a ''certain analyst/reporter's report is broadcast on cable TV.'' That rule provision has become obsolete and no longer provides a reason for which a specialist can switch to manual execution mode.

Additionally, the Exchange has not included, in its proposal, a requirement that a specialist firm that changes its auto-execution status must notify order-sending firms of that change. The Exchange reports that in recent months, order-sending firms appear, more and more, to base their order-routing decisions on the execution quality statistics of various market centers. The Exchange believes that, if orders are given quick executions at appropriate prices, order-sending firms may not be interested in whether the execution was automatically or manually given. Nevertheless, the Exchange plans to continue the practice of providing automated notices to order-sending firms that request them with respect to trading in OTC issues and will consider whether a similar practice is appropriate for firms that send orders in listed securities.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission. *See* Prefiling Notice of Proposed Rule Change (SR–CHX–2002–15), dated May 22, 2002.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46688; File No. SR–CSE–2002–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to Changes in Transaction and Related Fees

October 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4[2] thereunder, notice is hereby given that on September 30, 2002, the Cincinnati Stock Exchange, Inc. (''Exchange'' or ''CSE'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CSE. The proposed rule change has been filed by the CSE under Rule 19b-4(f)(2)[3] of the Act because it changes a due, fee, or other charge. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend the Exchange's schedule of transaction fees and related fees.

The text of the proposed rule change is below. Proposed additions are in italics and proposed deletions are in [brackets].

* * * * *

Proposed Rule Change

The Cincinnati Stock Exchange, Incorporated

Trading Rules

Rule 11.10 National Securities Trading System Fees

A. Trading Fees

(a)–(d) (No Change to Text)

(e) [(1) Crosses and Meets. Each member will be charged $0.0005 per share ($0.50/1000 shares), with a maximum charge of $37.50 per firm per side of the transaction. No agency, professional agency or proprietary charges are applied.

(2) Tape ''C'' Transactions. Tape ''C'' Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges (''UTP''). Members will be charged a per share fee for Nasdaq securities based upon the following schedule:

Number of shares traded (in a single day)	Fee per share
0–5 million	$0.001
5 million one +	0.000025]

(1) Users executing crosses and meets in Tape A securities shall be charged $0.0005 per share per side for average daily volume up to 5 million shares per day and $0.000025 per share per side for average daily volume above 5 million shares, with a maximum charge of $37.50 per firm per side of transaction.

(2) Users, who are not registered as Qualified or Designated Dealers in the securities in which they are executing crosses and meets in Tape C securities (Nasdaq NMM and SmallCap securities), shall pay no transaction fees.

(3) Dealers executing crosses in Tape C securities (Tape ''C'' Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges) in which they are registered shall be charged a per share fee as noted below:

Average daily number of shares	*Fee per share*
Up to 5 million shares	*$0.001*
5 million shares and above	*0.000025*

[(f) ITS Transactions. These transactions are charged according to the capacity in which they are executed.]

(f) ITS Transactions. All ITS transactions, whether inbound or outbound, will be charged $0.001 per share.

(g) (No change to text)

[(h) Preferenced Transactions. Designated dealers that are preferencing transactions are charged for one side of their preferenced transactions and are subject to the incremental rates as noted below:

Avg. daily principal share* volume	Charge per share
1 to 250,000	$0.0015
250,001 to 500,000	0.0013
500,001 to 750,000	0.0009
750,001 to 1,250,000	0.0007
1,250,000 and higher	0.0005

*Odd-Lot Shares Excluded]

(h)(1) Preferenced Transactions. Designated Dealers that are preferencing transactions in Tape A securities are charged for one side of their preferenced transactions and are subject to the incremental rates as noted below:

Average daily share volume*	*Charge per share*
1 to 250,000	*$0.0015*
250,001 to 500,000	*0.0013*
500,001 to 750,000	*0.0009*
750,001 to 1,250,000	*0.0007*
1,250,000 and higher	*0.0005*

**Odd-Lot shares excluded*

(2) Dealers executing preferencing transactions in Tape C securities are charged for one side of their preferenced transactions and are subject to the following incremental rates:

*Average daily share** volume*	*Charge per share*
Up to 5 million shares	*$0.001*
5 million shares and above	*0.000025*

***Odd-Lot shares excluded*

[(i) Member Gross Fee Discount. Members will receive an incremental discount to their total gross fee** charged in any given month as follows:

Gross fees	Percentage
$0.00 to $5,000	0
$5,000.01 to $20,000	0
$20,000.01 to $50,000	15
$50,000.01 to $90,000	20
$90,000.01 to $125,000	25
$125,000.01 and higher	30

*Excludes: Agency Transactions (a), Crosses & Meets (e), Dealer of the Day (g)(2) and Preferenced Transaction (h) Fees.]

(i) Reserved.

(j) Revenue Sharing Program. After the Exchange earns total operating revenue sufficient to offset actual expenses and working capital needs, a percentage of all specialist Operating Revenue (''SOR'') shall be eligible for sharing with Designated Dealers. SOR is defined as operating revenue, which is generated by specialist firms. SOR consists of transactions fees, book fees, technology fees, and market data revenue, which is attributable to specialist firm activity. SOR shall not include any investment income or regulatory monies. The sharing of SOR shall be based on each Designated Dealer's pro rata contribution to SOR. In no event shall the amount or revenue shared with Designated Dealers exceed SOR. *To the extent market data revenue is subject to year-end adjustment, SOR revenue may be adjusted accordingly.*

(k) Tape ''B'' Transactions. The CSE will not impose a transaction fee on Consolidated Tape ''B'' securities. In addition, Members will receive a 50 percent pro rata transaction credit of net Tape ''B'' revenue. *To the extent market*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 17 CFR 240.19b-4(f)(2).

data revenue from Tape ''B'' transactions is subject to year-end adjustment, credits provided under this program may be adjusted accordingly.

[(l) Tape ''C'' Transaction Credit. Members will receive a 75 percent pro rata transaction credit of Tape ''C'' revenue.]

(l) Reserved.

(m) (No change to text)

(n) (No change to text)

(o) Technology Fee. Every member of the Exchange shall be assessed a fee of [$500.00] *$750.00* per month to help offset technology expenses incurred by the Exchange.

(p) (No change to text)

(a) (No change to text)

(r) Workstation Fee. Every member using the Exchange Workstation shall be charged $500.00 per device per month.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing amendments to the Exchange Rules governing transaction and related fees. The first proposed rule change amends subsection (1) to Rule 11.10(A)(e), (''Crosses and Meets''). Subsection (1) currently provides that members will be charged $0.0005 per share per side, with a cap of $37.50 per firm per side of any transaction. The amended rule will provide that Users executing agency crosses or meets in Tape A securities (securities listed on the New York Stock Exchange) shall be charged $0.0005 per share per side for average daily volume up to 5 million shares and $0.000025 per share per side for average daily volume above 5 million shares. The cap of $75.00 per transaction remains.

Subsection (2) of Rule 11.10(A)(e) is amended to change the current fee structure for crosses and meets in Tape C (Nasdaq securities) transactions. Currently, subsection (2) provides a fee structure of $0.001 for average daily volume up to 5 million shares traded and $0.000025 for average daily volume above 5 million shares. Subsection (2) is amended eliminate the current fee schedule and to charge Users who are not Dealers no transaction fees for crosses and meets in Tape C securities. The Exchange states that since it is unable to share the market data revenue generated through its volume, the Exchange believes it is equitable and reasonable to reduce other transaction fees such as the fee for non-Dealers to execute crosses and meets in Tape C securities.[4]

Subsection (3) of Rule 11.10(A)(e) is added to provide that Dealers executing crosses in Tape C securities are charged $0.001 for average daily volume up to 5 million shares traded and $0.000025 for average daily volume above 5 million shares. The Exchange believes that it is fair to continue to charge Dealers in Tape C securities transaction fees because they are eligible to share in the market data revenue generated by their trading activity.[5] This is because, under Rule 11.10A(j), Dealers share in Specialist Operating Revenue, which includes market data revenue, after the CSE retains sufficient income to offset actual expenses and working capital needs.[6]

Rule 11.10(A)(f) is being amended to reflect changes in the billing of ITS transactions. Currently, ITS transactions are charged according to the capacity in which they are executed. The Exchange is amending Subsection (f) to provide that all ITS transactions will be billed $0.001 per share.

The Exchange is also amending Rule 11.10(A)(h), ''Preferenced Transactions,'' by adding subsections to the rule. Subsection (1) specifies that the current fee schedule for preferenced transactions set forth in rule 11.10(A)(h) applies to Tape A securities only. Subsection (2) is added to provide that preferenced transactions in Tape C securities will be charged $.001 for average daily volume up to 5 million shares and $0.000025 for average daily volume above 5 million shares.

Rule 11.10(A)(i), ''Member Gross Fee Discounts,'' is deleted in light of the other fee reductions implemented in this filing.

In addition, the Exchange is amending Rules 11.10(A)(j) and (k) by adding a provision to each clarifying that to the extent CSE market data revenue is subject to a year-end adjustment, revenues distributed to members is subject to adjustment accordingly. This Exchange believes that this provision will ensure that member receipts of market data revenue are consistent with the year-end true-up procedures applied by the Consolidated Tape Association and the Nasdaq-UTP Plan.

The Exchange is eliminating Rule 11.10(A)(l) because of the Commission's abrogation of the Exchange's pilot Nasdaq securities market data revenue sharing program.[7] However, the Exchange is reserving Rule 11.10(A)(l) should the Exchange refile its Nasdaq revenue sharing program. Finally, the Exchange is amending Rule 11.10(A)(o) to increase the Exchange's technology fee from $500 per month to $750 per month and is adding Rule 11.10(A)(r) to establish a fee of $500 per month for access to the Exchange's workstation, which was recently introduced to members.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[8] in general, and with section 6(b)(5) of the Act[9] specifically, in that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade. The Exchange also believes that the proposal is consistent with section 6(b)(4) of the Act[10] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by charging on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

[4] Telephone conference call among Jeffery T. Brown, Senior Vice President and General Counsel, CSE, Florence Harmon, Senior Special Counsel, Division, Commission, and Timothy Fox, Law Clerk, Division, Commission, October 16, 2002.

[5] *Id.*

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (Order of Summary Abrogation). The Commission notes that the proposed rule change will effectively remove transaction fees for non-Dealer members of CSE, including ECNs, who execute crosses or meets in Tape C securities.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change changes a member due, fee or other charge, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and subparagraph (f)(2) of Rule 19b-4[12] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–2002–14 and should be submitted by November 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27300 Filed 10–25–02; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46698; File No. SR–ISE–2002–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the International Securities Exchange, Inc. Relating to Pilot Fee Waivers

October 21, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2002, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The ISE filed an amendment to the proposed rule change on October 9, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to waive the following fees through May 31, 2003: firm proprietary execution fees for trading in the ISE Block Mechanism; firm proprietary execution fees for all trades on options on the iShares S&P 100 Index Fund; and the $.10 licensing surcharge fee for all firm proprietary trades in options on the iShares S&P 100 Index Fund.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to waive two firm proprietary fees for a pilot period expiring on May 31, 2003. Customer fees for these types of trades already are waived through June 30, 2003. *The fees the ISE proposes to waive under this pilot program are:*

- Firm proprietary fees for all transactions executed in the ISE's Block Order Mechanism. This is functionality that the ISE has introduced into the market place to effect large trades of 50 or more contracts. The ISE's goal is to attract firm proprietary traders to use this new type of functionality.
- Firm proprietary fees and licensing surcharges for all transactions in options on the iShares S&P 100 Index Fund, an exchange-traded fund based on the S&P 100 Index. The ISE's intent is to make trading in this product more attractive, and more competitive with options on the S&P 100 Index.

The ISE will continue to charge these fees to its members for trades by both ISE market makers and market makers on other exchanges. However, the ISE does not permit non-members to enter orders on the ISE, and thus does not impose these fees directly on non-members.

2. Statutory Basis

The ISE believes that the basis for the proposed rule change is the requirement under section 6(b)(4) of the Act[4] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated October 8, 2002, and attachment (''Amendment No. 1''). In Amendment No. 1, the ISE proposes to correct the rule text of the proposed rule change to clarify that the pilot period for the fee waivers would end on May 31, 2003.

[4] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to file number SR–ISE–2002–22 and should be submitted by November 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27301 Filed 10–25–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46695; File No. SR–NASD–2002–120]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Application of Additional Circuit/SDP Charge Under Rule 7010(f) to NASD Members

October 21, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 12, 2002 the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Nasdaq has prepared. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the rule immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the conditions under which members pay the Additional Circuit/SDP Charge under NASD Rule 7010(f).[5] As described in more detail in section II.A.1 below, for members that require circuit consolidation, Nasdaq proposes to implement the Additional Circuit/SDP Charge on a rolling basis as the circuit consolidation work is performed.

The text of the proposed rule change is below. Proposed new text is *italicized* and proposed deleted text is [bracketed].

* * * * *

Rule 7010. System Services

(a) '' (e) No change

(f) Nasdaq Workstation™ Service

(1) No change.

(2) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq *Workstation II Service*:

Service Charge $1,875/month per service delivery platform (''SDP'') from December 1, 2000 through February 28, 2001. $2,035/month per SDP beginning March 1, 2001.

Display Charge $525/month per presentation device (''PD'').

Additional Circuit/SDP Charge $3,075 per month from December 1, 2000 through February 28, 2001, and $3,235/month beginning March 1, 2001*.

A subscriber that accesses Nasdaq Workstation II Service via an application programming interface (''API'') shall be assessed the Service Charge for each of the subscriber's SDPs and shall be assessed the Display Charge for each of the subscriber's API linkages, including an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit/SDP Charge.

(3) No change.

*A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDPs by placing eight PDs and/or API servers on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each ''underutilized'' SDP(s) (*i.e.*, the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its PDs and/or API servers, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing [six] *eighteen* SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each ''underutilized'' SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming [a six to one] *an eighteen-to-one* ratio.

(g)–(r) No change.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Nasdaq also submitted a proposed rule change to modify the conditions under which non-members of the NASD pay the Additional Circuit/SDP Charge. *See* SR–NASD–2002–121.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Nasdaq Workstation II (''NWII'') service allows market participants to access Nasdaq and Nasdaq facilities through Nasdaq's Enterprise Wide Network II (''EWN II''). To use the NWII service, each subscriber location has at least one service delivery platform (''SDP'') that connects to Nasdaq by a dedicated T1 circuit pair. The SDP functions as the gateway from the subscriber's NWII ''presentation device'' (''PD'') [6] or application programming interface (''API'') server [7] to the EWN II. Each SDP is permitted to support up to eight PDs or API servers. In the past, each T1 circuit pair had been capable of supporting six SDPs. As the result of recent improvements in circuit efficiency, however, it is now possible to support eighteen SDPs on one T1 circuit pair. This marked increase in circuit capacity provides Nasdaq and its market participants with an opportunity to enhance the efficiency of the NWII service by reducing the number of circuits required to provide a given level of service.

Under Nasdaq's current pricing structure for NWII, a subscriber generally pays $2,035 per SDP month, but is assessed an ''Additional Circuit/SDP Charge'' of $3,235 per month for unutilized SDP slots if it uses T1 circuits inefficiently.[8] A subscriber does not pay the Additional Circuit/SDP Charge, however, if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDPs, assuming a six-to-one ratio. This pricing structure encourages subscribers to maximize circuit capacity and is aimed at preventing the premature exhaustion of EWN II's capacity to support additional circuits. This in turn helps to ensure that the capacity of the EWN II can keep pace with the growth of trading volumes. In order to reflect the realities of technological change and to encourage firms to take full advantage of the resulting efficiencies, Nasdaq is modifying the requirement for full utilization of circuits from six SDPs per T1 circuit to eighteen. As is currently the case, subscribers would not pay an Additional Circuit/SDP Charge for unused slots as long as the subscriber does not exceed the minimum number of T1 circuits needed to support its SDPs (based on an eighteen-to-one ratio).

Nasdaq believes that the increased efficiency of T1 circuits will allow Nasdaq and subscribers to discontinue the use of many T1 circuit pairs, and that this will, in turn, expand the available capacity of EWN II, thereby enhancing its ability to keep pace with future growth in trading volumes. In anticipation of this capacity expansion, during the past three months Nasdaq has tripled the EWN II bandwidth, from 256kb to 768kb, without increasing costs to subscribers. Moreover, since subscribers will be able to use a T1 circuit pair to support more SDPs than has previously been the case, a subscriber can now expand its own capability as its needs grow without incurring the costs and delays associated with installation of an additional circuit pair.

In order to allow subscribers with redundant circuits to take advantage of these added efficiencies, it will be necessary for Nasdaq to perform upgrades on subscribers' existing circuits, a process that can only be completed on a circuit-by-circuit basis. Accordingly, Nasdaq would implement the proposed Additional Circuit/SDP Charge on a rolling basis, as subscribers with redundant circuits are provided with the opportunity to have the circuit consolidation work performed. Subscribers would receive notice of the opportunity to eliminate unneeded circuits through direct personal contact from Nasdaq technical personnel. Until a subscriber's circuits have been upgraded, the subscriber would be charged the Additional Circuit/SDP Charge on the basis of a six-to-one ratio. Following the completion of the upgrade of a given subscriber, the eighteen-to-one ratio would apply. Similarly, if a subscriber chooses not to complete the upgrade, the subscriber would be charged according to the eighteen-to-one ratio, starting with the calendar month following its decision not to upgrade. Finally, for subscribers that do not require circuit consolidation, the eighteen-to-one ratio would apply immediately. Thus, if a subscriber that is utilizing circuits efficiently adds a new circuit before fully utilizing the capacity of existing circuit(s), it would be assessed the Additional Circuit/SDP Charge.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[9] including Section 15A(b)(5) of the Act,[10] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. As is currently the case, the Additional Circuit/SDP Charge would be imposed upon subscribers that make inefficient use of T1 circuits and SDPs. The proposed rule change would not result in any change in the fees paid by subscribers that take advantage of the opportunity to eliminate underutilized T1 circuits. Moreover, Nasdaq believes that, by encouraging subscribers to maximize circuit capacity, the proposed rule change will help to ensure that the EWN II can keep pace with future growth of trading volumes.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [11] and Rule

[6] A PD is an NWII workstation provided by Nasdaq that resides on the desktop of the end user.

[7] An API allows a firm to obtain NWII service using the firm's own workstation (*e.g.*, a personal computer), server, and software systems to access, display, interface with, and operate the NWII service.

[8] The Additional Circuit/SDP Charge is also assessed, in lieu of the $2,035 per SDP per month Service Charge, if a subscriber exceeds the minimum number of SDPs needed to support its PDs and/or API servers (assuming an eight-to-one ratio). This aspect of the fee is not being changed.

[9] 15 U.S.C. 78o-3.

[10] 15 U.S.C. 78o-3(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

19b–4(f)(2) thereunder [12] because it establishes or changes a due, fee, or other charge. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–120 and should be submitted by November 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27351 Filed 10–25–02; 8:45 am]

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[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46696; File No. SR–NASD–2002–121]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Application of Additional Circuit/SDP Charge Under Rule 7010(f) to Non-NASD Members

October 21, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 12, 2002 the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Nasdaq has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the conditions under which subscribers who are not members of the NASD pay the Additional Circuit/SDP Charge under NASD Rule 7010(f).[3] For non-member subscribers that require circuit consolidation, Nasdaq proposes to implement the Additional Circuit/SDP Charge on a rolling basis as the circuit consolidation work is performed.

The text of the proposed rule change is below. Proposed new text is italicized and proposed deleted text is [bracketed].

* * * * *

Rule 7010. System Services

(a)—(e) No change.

(f) Nasdaq Workstation™ Service

(1) No change.

(2) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq Workstation II Service:

Service Charge: $1,875/month per service delivery platform (''SDP'') from December 1, 2000 through February 28, 2001 $2,035/month per SDP beginning March 1, 2001.

Display Charge: $525/month per presentation device (''PD'').

Additional Circuit/SDP Charge: $3,075 per month from December 1, 2000 through February 28, 2001, and $3,235/month beginning March 1, 2001*.

A subscriber that accesses Nasdaq Workstation II Service via an application programming interface (''API'') shall be assessed the Service Charge for each of the subscriber's SDPs and shall be assessed the Display Charge for each of the subscriber's API linkages, including an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit /SDP Charge.

(3) No change.

*A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDPs by placing eight PDs and/or API servers on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each ''underutilized'' SDP(s) (*i.e.*, the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its PDs and/or API servers, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing [six] *eighteen* SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each ''underutilized'' SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming [a six to one] *an eighteen-to-one ratio*.

(g)–(r) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Nasdaq Workstation II (''NWII'') service allows market participants to access Nasdaq and Nasdaq facilities through Nasdaq's Enterprise Wide Network II (''EWN II''). To use the NWII service, each subscriber location has at least one service delivery platform

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq also submitted a proposed rule change to modify the conditions under which members pay the Additional Circuit/SDP Charge. *See* SR–NASD–2002–120.

(''SDP'') that connects to Nasdaq by a dedicated T1 circuit pair. The SDP functions as the gateway from the subscriber's NWII ''presentation device'' (''PD'')[4] or application programming interface (''API'') server[5] to the EWN II. Each SDP is permitted to support up to eight PDs or API servers. In the past, each T1 circuit pair had been capable of supporting six SDPs. As the result of recent improvements in circuit efficiency, however, it is now possible to support eighteen SDPs on one T1 circuit pair. This marked increase in circuit capacity provides Nasdaq and its market participants with an opportunity to enhance the efficiency of the NWII service by reducing the number of circuits required to provide a given level of service.

Under Nasdaq's current pricing structure for NWII, a subscriber generally pays $2,035 per SDP month, but is assessed an ''Additional Circuit/SDP Charge'' of $3,235 per month for unutilized SDP slots if it uses T1 circuits inefficiently.[6] A subscriber does not pay the Additional Circuit/SDP Charge, however, if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDPs, assuming a six-to-one ratio. This pricing structure encourages subscribers to maximize circuit capacity and is aimed at preventing the premature exhaustion of EWN II's capacity to support additional circuits. This in turn helps to ensure that the capacity of the EWN II can keep pace with the growth of trading volumes. In order to reflect the realities of technological change and to encourage firms to take full advantage of the resulting efficiencies, Nasdaq is modifying the requirement for full utilization of T1 circuits from six SDPs per T1 circuit to eighteen. As is currently the case, subscribers would not pay an Additional Circuit/SDP Charge for unused slots as long as the subscriber does not exceed the minimum number of T1 circuits needed to support its SDPs (based on an eighteen-to-one ratio).

Nasdaq believes that the increased efficiency of T1 circuits will allow Nasdaq and subscribers to discontinue the use of many T1 circuit pairs and that this will, in turn, expand the available capacity of EWN II, thereby enhancing its ability to keep pace with future growth in trading volumes. In anticipation of this capacity expansion, during the past three months Nasdaq has tripled the EWN II bandwidth, from 256kb to 768kb, without increasing costs to subscribers. Moreover, since subscribers will be able to use a T1 circuit pair to support more SDPs than has previously been the case, a subscriber can now expand its own capability as its needs grow without incurring the costs and delays associated with installation of an additional circuit pair.

In order to allow subscribers with redundant circuits to take advantage of these added efficiencies, it will be necessary for Nasdaq to perform upgrades on subscribers' existing circuits, a process that can only be completed on a circuit-by-circuit basis. Accordingly, Nasdaq would implement the proposed Additional Circuit/SDP Change on a rolling basis, as it provides subscribers with redundant circuits the opportunity to have the circuit consolidation work performed. Subscribers would receive notice of the opportunity to eliminate unneeded circuits through direct personal contact from Nasdaq technical personnel. Until a subscriber's circuits have been upgraded, the subscriber would be charged the Additional Circuit/SDP Charge on the basis of a six-to-one ratio. Following the completion of the upgrade of a given subscriber, the eighteen-to-one ratio would apply. Similarly, if a subscriber chooses not to complete the upgrade, the subscriber would be charged according to the eighteen-to-one ratio, starting with the calendar month following its decision not to upgrade. Finally, for subscribers that do not require circuit consolidation, the eighteen-to-one ratio would apply once the proposed rule change becomes effective. Thus, if a subscriber that is utilizing circuits efficiently adds a new circuit before fully utilizing the capacity of existing circuit(s), it would be assessed the Additional Circuit/SDP Charge.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[7] including section 15A(b)(5) of the Act,[8] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. As is currently the case, the Additional Circuit/SDP Charge would be imposed upon subscribers that make inefficient use of T1 circuits and SDPs. The proposed rule change would not result in any change in the fees paid by subscribers that take advantage of the opportunity to eliminate underutilized T1 circuits. Moreover, Nasdaq believes that, by encouraging subscribers to maximize circuit capacity, the proposed rule change will help to ensure that the EWN II can keep pace with future growth of trading volumes.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[4] A PD is an NWII workstation provided by Nasdaq that resides on the desktop of the end user.

[5] An API allows a firm to obtain NWII service using the firm's own workstation (*e.g.*, a personal computer), server, and software systems to access, display, interface with, and operate the NWII service.

[6] The Additional Circuit/SDP Charge is also assessed, in lieu of the $2,035 per SDP per month Service Charge, if a subscriber exceeds the minimum number of SDPs needed to support its PDs and/or API servers (assuming an eight-to-one ratio). This aspect of the fee is not being changed.

[7] 15 U.S.C. 78o–3.

[8] 15 U.S.C. 78o–3(b)(5).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–121 and should be submitted by November 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27352 Filed 10–25–02; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3455]

State of California

Los Angeles County and the contiguous counties of Kern, Orange, San Bernardino and Ventura in the State of California constitute a disaster area as a result of a wildfire that began on September 1, 2002 in a portion of the San Gabriel Canyon in the Angeles National Forest. The wildfire, known as the ''Curve Fire'', consumed 20,857 acres and destroyed homes and personal property. The wildfire was fully contained on September 12, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 23, 2002, and for economic injury until the close of business on July 22, 2003, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	7.000
Businesses and Non-Profit Organizations Without Credit Available elsewhere:	3.500
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 345505 and for economic damage is 9R9900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 22, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–27355 Filed 10–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3456]

State of California

Los Angeles County and the contiguous counties of Kern, Orange, San Bernardino and Ventura in the State of California constitute a disaster area as a result of a wildfire that began on September 22, 2002 in a portion of the San Dimas Canyon in the Angeles National Forest. The wildfire, known as the ''Williams Fire'', consumed 38,094 acres and destroyed homes and personal property. The wildfire was fully contained on October 1, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 23, 2002, and for economic injury until the close of business on July 22, 2003, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	7.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.500
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 345605 and for economic damage is 9S0100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 22, 2002

Hector V. Barreto,

Administrator.

[FR Doc. 02–27356 Filed 10–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3452, Amdt. #2]

State of Louisiana

In accordance with a notice received from the Federal Emergency Management Agency, dated October 17, 2002, the above numbered declaration is hereby amended to include Allen, East Baton Rouge, East Feliciana, Pointe Coupee, Rapides, St. Helena, Washington and West Baton Rouge Parishes in the State of Louisiana as disaster areas due to damages caused by Hurricane Lili beginning on October 1, 2002, and continuing through October 16, 2002.

In addition, applications for economic injury loans from small businesses located in Grant and Natchitoches Parishes in Louisiana; and Marion, Walthall and Wilkinson Counties in Mississippi may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is December 2, 2002, and for economic injury the deadline is July 3, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 21, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–27358 Filed 10–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3454]

State of South Carolina

Clarendon and Georgetown Counties and the contiguous counties of Berkeley, Calhoun, Charleston, Florence, Horry, Marion, Orangeburg, Sumter and Williamsburg in the State of South Carolina constitute a disaster area due to damages caused by flooding and tornadoes from Tropical Storm Kyle on

October 11, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 20, 2002, and for economic injury until the close of business on July 21, 2003, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 345406 and for economic damage is 9R9800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 21, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–27357 Filed 10–25–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4168]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Tunisian Combat Group (JCT)

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby determine that the Tunisian Combat Group (JCT) has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: October 7, 2002.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 02–27354 Filed 10–25–02; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During October 7, Through October 18, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Applications filed during week ending: October 11, 2002.

Docket Number: OST–2002–13557.
Date Filed: October 9, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0971 dated 11 October 2002. Mail Vote 243—Resolution 004a. Restriction of Applicability (Amending) r1. Intended effective date: 21 October 2002.

Docket Number: OST–2002–13560.
Date Filed: October 9, 2002.
Parties: Members of the International Air Transport Association.
Subject: CTC COMP 0425 dated 11 October 2002. Mail Vote 244—Resolution 004a. Restriction of Applicability of Resolutions (Amending) r1. Intended effective date: 21 October 2002.

Docket Number: OST–2002–13563.
Date Filed: October 9, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC23 ME–TC3 0154 dated 8 October 2002. TC23/TC123 Middle East–TC3 (except South East Asia). Expedited Resolution 002p. Intended effective date: 15 November 2002.

Docket Number: OST–2002–13565.
Date Filed: October 9, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–JK 0086 dated 8 October 2002. TC23/TC123 Europe-Japan/Korea Expedited Resolution 002an. PTC23 EUR–JK 0087 dated 8 October 2002. TC23/TC123 Europe-Japan/Korea Expedited Resolution 002ao. Intended effective date: 15 November 2002/1 January 2003.

Docket Number: OST–2002–13579.
Date Filed: October 9, 2002.
Parties: Members of the International Air Transport Association.
Subject: PAC/Reso/417 dated August 5, 2002. Finally Adopted Resolutions R–1 to R–12. Minutes—PAC/Meet/175 dated August 5, 2002. Intended effective date: January 1, 2003.

Applications filed during week ending: October 18, 2002.

Docket Number: OST–2002–13606.
Date Filed: October 16, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC2 AFR–TC3 0178 dated 11 October 2002. TC23 Africa-South Asian Subcontinent. Expedited Resolutions 002e, 15v r1—r2. PTC2 AFR–TC3 0179 dated 11 October 2002. TC23 Africa-South West Pacific. Expedited Resolutions 002n, 15v–r3—r4. Intended effective date: 15 November 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–27386 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly subpart Q) During the Week Ending October 18, 2002

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1999–6319.
Date Filed: October 16, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 6, 2002.

Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting to amend its experimental certificate of public convenience and necessity for Route 564 (U.S.-Mexico) to incorporate authority for service between Memphis and Mexico City, Memphis and Puerto Vallarta, and Detroit and Cozumel. Northwest also requests that the Department integrate this authority with all of Northwest's existing certificate and exemption authority to the extent consistent with U.S. bilateral agreements and DOT policy.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–27385 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–12690]

Information Collection Under Review by the Office of Management and Budget: (OMB): 2115–0139, 2115–0035, 2115–0598, 2115–0556, and 2115–0111

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the five Information Collection Reports (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before November 27, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–12690] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Docket Management Facility at (202) 493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a website on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available for inspection and copying in public dockets. They are available in docket USCG 2002–12690 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov*; and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, (202) 267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, (202) 366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published [67 FR 49734 (July 31, 2002)] the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2002–12690. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

1. *Title:* Ships' Stores Certification for Hazardous Materials Aboard Ships.

OMB Control Number: 2115–0139.

Type of Request: Extension of a currently approved collection.

Affected Public: Suppliers and manufacturers of hazardous products used on ships.

Form: This collection of information does not require the public to fill out forms, but does require the information to be in written format to the Coast Guard.

Abstract: The information is needed to ensure that personnel aboard ships become aware of the proper usage and stowage for certain hazardous materials.

Annual Estimated Burden Hours: The estimated burden is 6 hours a year.

2. *Title:* Report of Defect or Noncompliance and Report of Campaign Update.

OMB Control Number: 2115–0035.

Type of Request: Extension of a currently approved collection.

Affected Public: Manufacturers of recreational boats, inboard engines, outboard motors, and sterndrive units.

Forms: CG–4917 and CG–4918.

Abstract: The information in this report is needed to ensure manufacturers' compliance with requirements for notifying consumers of defects in recreational boats, inboard engines, outboard motors, and sterndrive units.

Annual Estimated Burden Hours: The estimated burden is 328 hours a year.

3. *Title:* Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters.

OMB Control Number: 2115–0598.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of certain vessels.

Forms: CG–5662.

Abstract: The information is needed to carry out the reporting requirements of 16 U.S.C. 4711 regarding the management of ballast water, to prevent the introduction and spread of aquatic-nuisance species into U.S. waters.

Annual Estimated Burden Hours: The estimated burden is 33,500 hours a year.

4. *Title:* (a) Reports of MARPOL 73/78 Oil, Noxious Liquid Substances (NLS) and Garbage Discharge; (b) Application for Equivalents, Exemptions, and Alternatives; and (c) Voluntary Reports of Pollution Sightings.

OMB Control Number: 2115–0556.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels for (a) and (b), and the public for (c).

Forms: This collection of information does not require the public to fill out forms, but does require the information to be in written or electronic format.

Abstract: The information is needed by the Coast Guard to ensure compliance with pollution-prevention standards and to respond to and investigate pollution incidents.

Annual Estimated Burden Hours: The estimated burden is 10 hours a year.

5. *Title:* Course Approval for Merchant Marine Training Schools.

OMB Control Number: 2115–0111.

Type of Request: Extension of a currently approved collection.

Affected Public: Merchant marine training schools.

Forms: This collection of information does not require the public to fill out forms, but does require the information submitted to be in written or electronic format.

Abstract: The information is needed to ensure that merchant marine training schools meet minimal statutory requirements. The information is used to approve the curricula, facilities, and faculties for these schools.

Annual Estimated Burden Hours: The estimated burden is 16,988 hours a year.

Dated: October 23, 2002.

C. I. Pearson,

Director of Information and Technology.

[FR Doc. 02–27371 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–9852]

High Density Airports; Notice of Adopted Lottery Allocation Procedures for Slot Exemptions at LaGuardia Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of adopted lottery allocation procedures at LaGuardia Airport.

SUMMARY: This notice announces the adoption of proposed modifications to the lottery procedures for reallocation of available exemption slots at LaGuardia Airport.

DATES: Effective upon publication.

FOR FURTHER INFORMATION CONTACT: Lorelei D. Peter, Traffic and Operations Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–3073.

SUPPLEMENTARY INFORMATION:

Background

The FAA has broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of the navigable airspace of the United States. Under 49 U.S.C. 40103, the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as many be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. Also, under section 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace. The High Density Traffic Airports Rule, or ''High Density Rule,'' 14 CFR part 93, subpart K, was promulgated in 1968 to reduce delays at five congested airports: John F. Kennedy International Airport (JFK), LaGuardia, O'Hare International Airport (O'Hare), Ronald Reagan Washington National Airport (Reagan National) and Newark International Airport (Newark) (33 FR 17896; December 3, 1968). The regulation limits the number of instrument flight rule (IFR) operations at each airport, during certain hours of the day. It provides for the allocation to carriers of operational authority, in the form of a ''slot'' for each IFR takeoff or landing during a specific 30- or 60-minute period. The restrictions at Newark were lifted in the early 1970s.

''AIR–21''

On April 5, 2000, the ''Wendell H. Ford Aviation Investment and Reform Act for the 21st Century'' (''AIR–21'') was enacted. Section 231 of AIR–21 significantly amended 49 U.S.C. 41714 to phase out slots at LaGuardia, JFK, and O'Hare. Section 41715 terminates slots at O'Hare as of July 1, 2002, and at LaGuardia and JFK on January 1, 2007. Section 231 also included new provisions codified at 40 U.S.C. 41716, 41717, and 41718 that enable air carriers meeting specified criteria to obtain exemptions (referred to as ''exemption slots'') from the requirements of subparts K and S of part 93 of Title 14 of the Code of Federal Regulations at LaGuardia, JFK, O'Hare, and Reagan National. As a result of this legislation, the Department of Transportation (Department) issued eight orders establishing procedures for the processing of various applications for exemption slots authorized by the statute. Specifically, Order 2000–4–11 implements 49 U.S.C. 41716(a), which provides that an exemption slot must be granted to any airline using Stage 3 aircraft with fewer than 71 seats that proposes to provide nonstop service between LaGuardia and an airport that was designated as a small hub or nonhub airport in 1997, under certain conditions. The exemption must be granted if: (1) The airline was not providing such nonstop service between the small hub or nonhub airport and LaGuardia during the week of November 1, 1999; (2) the proposed service between the small hub or nonhub airports and LaGuardia exceeds the number of flights provided between such airports during the week of November 1, 1999; or (3) if the air transportation pursuant to the exemption would be provided with a regional jet as replacement of turboprop service that was being provided during the week of November 1, 1999.

Under AIR–21 and the Department's Orders, air carriers meeting the statutory tests delineated above automatically receive blanket approval for exemption slots, provided that they certify in accordance with 14 CFR 302.4(b) that they meet each of the statutory criteria. The certification must state the communities and airport to be served, that the airport was designated a small hub and nonhub airport as of 1997, that the aircraft used to provide the service have fewer than 71 seats, that the aircraft are Stage 3 compliant, and the

planned effective dates. Carriers must also certify that the proposed service represents new service, additional frequencies, or regional jet service that has been upgraded from turboprop service when compared to service for the week of November 1, 1999. In addition, carriers must state the number of exemption slots and the times needed to provide the service. Order 2000–4–10 implements the provisions of 49 U.S.C. 41716(b), which states that exemption slots must be granted to any new entrant or limited incumbent airline using Stage 3 aircraft that proposes ''to provide air transportation to or from LaGuardia or John F. Kennedy International Airport if the number of exemption slots granted under this subsection to such air carrier with respect to such airport does not exceed 20.'' Applications submitted under this provision must identify the airports to be served and the time requested.

Section 231 of AIR–21, 49 U.S.C. 41715(b)(1), expressly provides that the provisions for exemption slots are not to affect the FAA's authority over safety and the movement of air traffic. The reallocation of exemption slot times by the lottery procedures described in this Notice is based on the FAA's statutory authority and does not rescind the exemptions issued by the Department under Orders 2000–4–10 and 2000–4–11. As provided in those orders, carriers that have filed the exemption certifications also need to obtain an allocation of exemption slot times from the FAA. The limiting and reallocation of these exemption slots is in recognition that it is not possible to add an unlimited number of new operations at LaGuardia, especially during peak hours, even if those operations would otherwise qualify for exemptions under AIR–21.

Lastly, § 93.225 of Title 14 of the Code of Federal Regulations sets forth the process for slot lotteries under the High Density Rule. The process described in the regulations is similar to the process described here and allows for special conditions to be included when circumstances warrant special consideration.

Extension of the Exemption Slot Allocation and Proposed Modifications to the Lottery Procedures

By notice published in the **Federal Register**, the FAA extended the allocation of the exemption slots for an additional two years. This extension, which will expire on October 31, 2004, allows for additional time to address a longer-term solution for LaGuardia Airport. Additionally, modifications to the allocation procedures were proposed for comment. One comment was received from America West Airlines. Several commenters filed comments discussing the long-term demand-management proposals in this docket as well as Docket FAA–2001–9854. Due to the nature of these comments, they will not be addressed in this Notice.

America West reiterates its argument in its comments to Phase II (policy alternatives for demand management) to abolish or modify the perimeter rule for LaGuardia Airport to enable it to operate non-stop service between LaGuardia and its principal hubs of Phoenix and Las Vegas. America West contends that the perimeter rule is anti-competitive and contributes to congestion. America West further argues that eliminating or modifying the perimeter rule can be made without determining the broader issues associated with demand management at LaGuardia and that there is no reason to delay action on this issue. America West also argues that since the incumbent carriers hold such a large percentage of the slots allocated under the High Density Rule (HDR), new entrants carriers should receive all requested exemption slots up to the statutory limit of 20, before any additional exemption slots are allocated to small hub, non-hub service by the large incumbent carriers.

In this notice, only comments concerning the proposed allocation procedures will be addressed. AIR–21 sought to provide additional access to LaGuardia for two distinct categories of operations as part of a phase-out of the HDR. AIR–21 did not seek to rectify any imbalance among competing slot holders of HDR slots. Instead, AIR–21 treats the categories equitably. As the FAA has stated in previous notices, for the interim period, the agency's stated policy of maintaining the goals and purposes of AIR–21 requires that allocation procedures are consistent with the policies of AIR–21. Therefore, the FAA adopts the lottery procedures as proposed and set forth below.

Adopted Lottery Procedures

1. The cap on AIR–21 exemption slots (7 a.m. through 9:59 a.m.) will remain in effect through October 30, 2004.

2. The FAA may approve the transfer of exemption slot times between carriers only on a temporary one-for-one basis for the purpose of conducting the operation in a different time period. Carriers must certify to the FAA that no other consideration is involved in the transfer.

3. Phase I: If any exemption slots are returned to the FAA or are withdrawn for non-use, the FAA would make the first four exemption slots available on a first-come, first-serve basis to a carrier that was not operating at LaGuardia as of August 15, 2001, that has certified to the Department in accordance with the procedures articulated in OST Order 200–4–10, and has a written request on file with the Slot Administration Office. Any of the first four returned or withdrawn exemption slots that are not selected by such a carrier would be available to the carriers that have less than 20 slots and exemptions slots at LaGuardia for selection in accordance with the August 15 established rank order, with each carrier able to select two exemption slots. Any exemption slots not selected during this process then would be made available to the carriers providing small hub/non-hub service using the December 4 rank order. This concludes Phase I.

4. Phase II: If any subsequent exemption slots become available for reallocation and there is an eligible carrier not conducting service at the airport seeking exemption slots, then the available exemption slots would be offered to that carrier first, provided that the total number of exemption slots allocated to carriers providing small hub/non-hub service is not below 76. If a new, eligible carrier does not select the exemption slots, then they would be offered to the category of carriers that is below parity, up to the level of re-establishing parity (using respective rank order). If the exemption slots are not selected or there are available exemption slots remaining, then they would be offered to carriers in the same category from which the exemption slots came. Any remaining exemptions not selected would be offered to the other category of carriers, using its respective rank order.

5. A carrier would have three business days after an offer from the Slot Administration Office to accept the offered exemption slot time. Acceptance must be in writing to the Slot Administration Office. If the Slot Administration Office does not receive an acceptance to an office within three business days, the carrier would be recorded as rejecting the offer and the next carrier on the list would be offered the available exemption slot times.

6. Carriers that are offered exemption slot times by the Slot Administration Office must re-certify to the Department of Transportation in accordance with the procedures articulated in OST Orders 200–4–10 and 2000–4–11 prior to operation and provide the Department and the FAA with the markets to be served, the number of exemption slots, the frequency, and the time of operations, before the exemption

slots times will be allocated by the FAA to the carrier.

7. All operations allocated under these procedures must commence within 120 days of a carrier's acceptance of an available exemption slot.

8. The Chief Counsel will be the final decision maker concerning eligibility of carriers to participate in the allocation process.

Issued on October 22, 2002, in Washington, DC.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 02–27381 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–60]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 18, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–200X–XXXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sandy Buchanan-Sumter, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7271.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 23, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–11131.

Petitioner: Gary K. Gates.

Section of 14 CFR Affected: 14 CFR 61.113(d) and (e)

Description of Relief Sought: To permit an individual holding a private pilot certificate with at least 1,000 hours of pilot-in-command time and an instrument rating to conduct point-to-point airlifts of medical. The individual conducting the airlifts would provide transport to checkups and followup hospital visits and receive compensation for concurrent operating expenses.

[FR Doc. 02–27380 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting is scheduled for November 7, 2002, at 10 a.m.

ADDRESSES: The meeting will be held at Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 10591, 10th floor, McCracken Room.

FOR FURTHER INFORMATION CONTACT: Gerri Robinson, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9678; fax (202) 267–5075; e-mail *Gerri.Robinson@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Executive Committee to be held on November 7, 2002, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591. The agenda will include:

- Status of Fuel Tank Recommendation.
- AVR Priority Process.
- Department Internet RulemakingTracking System.
- Green Book Changes.
- Issue Area Status Reports from Assistant Chairs.
- Remarks from other EXCOM members.
- Committee Schedule for 2003.

The FAA will brief ARAC on the status of the recommendation forwarded to the FAA from the Fuel Tank Inerting Harmonization Working Group on March 29, 2002, and pending changes to the ARAC Operations Manual.

Attendance is open to the interested public but will be limited to the space available. The FAA will arrange teleconference capability for individuals wishing to join in by teleconference if we receive that notification by October 31, 2002. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long-distance charges.

The public must arrange by October 31 to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on October 22, 2002.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–27428 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Free Flight Steering Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Free Flight Steering Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Government/Industry Free Flight Steering Committee.

DATES: The meeting will be held November 15, 2002, from 10:30–12 pm.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (Rm. 2AB), Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

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 Free Flight Steering Committee meeting. ***Note:*** *Non-Government attendees to the meeting must go through security and be escorted to and from the conference room.* The agenda will include:

- November 15:
  - Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting)
- Free Flight Select Committee Report
  - National Airspace System Concept of Operations, Revision 1
  - Work Program Update
- Federal Aviation Administration Presentation
- Suggested Free Flight Steering Committee Meeting Dates for 2003
  - Wednesday, April 23, 2003
  - Wednesday, August 20, 2003
  - Wednesday, December 3, 2003
- Closing Session (Other Business, Date and Place of Next Meeting)

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.

Issued in Washington, DC, on October 21, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–27383 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–05–C–00–PSC To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tri-Cities Airport, Submitted by the Port of Pasco, Tri-Cities Airport, Pasco, 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 impose and use PFC revenue at Tri-Cities Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 27, 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. James Morasch, A.A.E, Director of Airports, at the following address: 3601 North 20th Avenue, Pasco, Washington 99301.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Bellingham International Airport, under § 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 02–05–C–00–PSC to impose and use PFC revenue at Tri-Cities Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 21, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Port of Pasco, Tri-Cities Airport, and Pasco, Washington was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 25, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: April 1, 2002.

Proposed charge expiration date: February 1, 2006.

Total requested for use approval: $1,409,000.

Brief description of proposed project: Security Enhancements, Terminal Building Passenger Boarding Area Upgrades, and Interactive Training Systems.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: None.

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 Tri-Cities Airport.

Issued in Renton, Washington on October 21, 2002.

David A. Field,

Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–27382 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2002–13634]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces the Information Collection Request (ICR) abstracted below has been

forwarded to the Office of Management and Budget (OMB) for extension of the currently approved information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on July 30, 2002.

DATES: Comments must be submitted before November 27, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: Rail Fixed Guideway Systems, State Safety Oversight (*OMB Number: 2132–0558*)

Abstract: 49 U.S.C. section 5330 requires each State to designate a State Safety Oversight agency to oversee the safety and security operations of ''a rail fixed guideway system'' within the State's jurisdiction. To comply with Section 5330, State oversight agencies must require System Safety Program Plans (SSPPs) from rail fixed guideway systems; review and approve these SSPPs; require notification of unacceptable hazardous conditions according to the American Public Transportation Association (APTA) Hazard Classification Matrix; require and review corrective action plans from rail fixed guideway systems to eliminate such conditions; require an ongoing safety audit process at the rail fixed guideway systems; and submit both an annual certification to FTA that the State is in compliance with the requirements of Section 5330 and an annual report documenting safety activities. Collection of this information will enable the State oversight agency to monitor effectively the safety of the rail fixed guideway system. Without certification from the State oversight agency, FTA would be unable to determine each State's compliance with Section 5330.

If a State fails to comply with the requirements of Section 5330, FTA may withhold up to five percent of funds apportioned under section 5307 to a State, or urbanized area within a State, beginning in Fiscal Year 1997.

Estimated Annual Burden: 37,158 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: October 22, 2002.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 02–27384 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Over-the-Road Bus Accessibility Program Announcement of Project Selection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation (DOT) Federal Transit Administration (FTA) announces the selection of projects to be funded under Fiscal Year 2002 appropriations for the Over-the-road Bus (OTRB) Accessibility Program, authorized by section 3038 of the Transportation Equity Act for the 21st Century (TEA–21). The OTRB Accessibility Program makes funds available to private operators of over-the-road buses to help finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility rule, published in a **Federal Register** notice on September 24, 1998.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant-specific issues; or Sue Masselink, Office of Program Management, 202–366–2053, for general information about the OTRB Program.

SUPPLEMENTARY INFORMATION: A total of $6.9 million was appropriated for the program in FY 2002 which together with $204,100 in prior year unobligated funds made a total of $7.1 million available for allocation: $5.3 million for intercity fixed-route providers and $1.8 million for all other providers, such as commuter, charter, and tour operators. A total of 91 applicants requested $18.4 million: $11.5 million was requested by intercity fixed-route providers, and $6.9 million was requested by all other providers. Project selections were made on a discretionary basis, based on each applicant's responsiveness to statutory project selection criteria, fleet size, and level of funding received in previous years. Because of the high demand for the funds available, most applicants received less funding than they requested, but all qualified applicants received some funding. The selected projects will provide funding for the incremental cost of adding lifts to 149 new vehicles, retrofitting 68 vehicles, and $476,279 for training. Each of the following 73 awardees, as well as the 18 applicants who were not selected for funding, will receive a letter that explains how funding decisions were made.

Operator	Award Amounts		
	Intercity fixed-route	Other	Total
Region I:			
Arrow Line, Inc., East Hartford, CT		$50,000	50,000
Bonanza Bus Lines, Providence, RI	$68,080		68,080
Brunswick Transportation Company, South Portland, ME		42,700	42,700
Brush Hill Transportation Company, Randolph, MA	28,915		28,915
Gulbankian Bus Lines, Southborough, MA		11,709	11,709
McGinn Bus Company, Plymouth, MA	28,915		28,915
Mini Coach of Boston, Inc., Chelsea, MA		38,000	38,000
Morgan Coach Lines, Inc., South Deerfield, MA		39,895	39,895
Pawtuxet Valley Bus Lines, West Warwick, RI		7,200	7,200
Peter Pan Bus Lines, Springfield, MA	113,600		113,600

Operator	Award Amounts		
	Intercity fixed-route	Other	Total
Vermont Transit Company, Inc., Burlington, VT	99,454		99,454
Region II:			
Academy Express, LLC, Hoboken, NJ	18,000	26,936	44,936
Adirondack Trailways, Hurley, NY	130,000		130,000
Blue Bird Coach Lines, Inc., N. Tonawanda, NY	40,770	42,120	82,890
DeCamp Bus Lines, Montclair, NJ		90,000	90,000
Hampton Jitney, Inc., Southampton, NY		25,575	25,575
Hudson Transit Lines, Inc., Mahwah, NJ	108,000		108,000
Suburban Transit Corp., New Brunswick, NJ		18,000	18,000
Sunrise Coach Lines, Inc., Greenport, NY		32,010	32,010
Syracuse and Oswego Motor Lines, East Syracuse, NY		39,600	39,600
Utica Rome Bus Company, Clinton, NY		39,150	39,150
Region III:			
Butler Motor Transit, Butler, PA		44,100	44,100
Capitol Bus Company, Harrisburg, PA	5,000		5,000
Central Cab Company, Waynesburg, PA		43,200	43,200
Elite Coach, Ephrata, PA		40,950	40,950
Eyre Bus Service, Inc., Glenelg, MD		102,857	102,857
First Priority Tours, Inc., District Heights, MD		34,306	34,306
James River Bus Lines, Richmond, VA		38,520	38,520
Lenzer Tour and Travel, Sewickley, PA		42,750	42,750
Martz Trailways, Wilkes-Barre, PA	199,579		199,579
Mountaineer Coach, Beaver, WV		19,000	19,000
Thomas Tours, Beltsville, MD		20,646	20,646
Trans-Bridge Lines, Bethlehem, PA	51,053		51,053
Region IV:			
Southern Coach, Durham, North Carolina		84,090	84,090
Carolina Trailways, Raleigh, North Carolina	99,454		99,454
First Class Coach Co., St. Petersburg, Florida	107,200		107,200
Good Time Tours, Pensacola, Florida		26,902	26,902
Capital Trailways, Montgomery, Alabama	69,300		69,300
Colonial Trailways, Mobile, Alabama		60,750	60,750
Americoach Tours, Memphis, Tennessee		46,250	46,250
Region V:			
Jefferson Lines, Minneapolis, Minnesota	143,188		143,188
Rockford Coach Lines, LLC, Rockford, Illinois	66,303		66,303
Gad-About Tours, Columbiana, Ohio		36,800	36,800
Ready Bus Lines, La Crescent, Minnesota		29,700	29,700
VanGalder Bus, Janesville, Wisconsin	9,700		9,700
Seniors Unlimited, Pontiac, Michigan		22,190	22,190
Wisconsin Coach, Waukesha, Wisconsin	81,400		81,400
Croswell Bus Lines, Inc., Williamsburg, Ohio		27,692	27,692
Peoria Charter Coach Co., Peoria, Illinois		19,950	19,950
Robinson Coach, Evanston, Illinois		56,500	56,500
Region VI:			
Valley Transit, Harlington, Texas	66,000		66,000
Kerrville Bus Co., San Antonio, Texas	94,140	36,000	130,140
TNM&O, Lubbock, Texas	66,303		66,303
All Aboard America, Carlsbad, New Mexico		41,741	41,741
Franklin Charter, Inc., Tulsa, Oklahoma		29,000	29,000
Gulf Coast Transit, Houston, Texas		112,000	112,000
El Expresso, Houston, Texas	85,500	38,250	123,750
Fun Time Tours, Corpus Christi, Texas		38,934	38,934
Greyhound, Dallas, Texas	3,025,082		3,025,082
Region VII:			
St. Louis Executive Coach, Inc., St. Louis, Missouri		32,800	32,800
Burlington Trailways, West Burlington, Iowa	57,025		57,025
Region VIII: No Applications			
Region IX:			
Royal Safari, Orange, California	28,885		28,885
Santa Barbara Air Bus, Goleta, California	51,868		51,868
Roberts Hawaii, Honolulu, Hawaii		126,000	126,000
Marin Airporter, San Rafael, California	80,600		80,600
KT Contract Services, Inc., North Las Vegas, Nevada	76,950	6,000	82,950
Quest, San Luis Obispo, California	32,612		32,612
Grosvenor Bus Lines, San Francisco, California		36,000	36,000
Storer Coach, Modesto, California		62,500	62,500
Orange Belt Stages, Visalia, California	51,520		51,520
Region X:			
Wikkiser International Co., Inc., Ferndale, Washington	40,000		40,000
Wheatland Express, Pullman, WA	28,800	27,000	55,800

Operator	Award Amounts		
	Intercity fixed-route	Other	Total
Total	5,313,946	1,825,523	7,139,469

Eligible project costs may be incurred by awardees prior to final grant approval. The incremental capital cost for adding wheelchair lift equipment to any new vehicles delivered on or after June 9, 1998, the effective date of TEA–21, is eligible for funding under the OTRB Accessibility Program.

Applicants selected for funding may be contacted by FTA regional offices if additional information is needed before grants are made. The grant applications will be sent to the U.S. Department of Labor (DOL) for certification under labor protection requirements pursuant to 49 U.S.C. 5333(b). After referring applications to affected employees represented by a labor organization, DOL will issue a certification to FTA. Terms and conditions of the certification will be incorporated in the FTA grant agreement under the new guidelines replacing those in 29 CFR Part 215. Please see *Amendment to Section 5333(b), Guidelines to Carry Out New Programs Authorized by the Transportation Equity Act for the 21st Century (TEA–21)*; Final Rule (64 FR 40990, July 28, 1999).

Issued on October 22, 2002.

Jennifer L. Dorn,

Administrator.

[FR Doc. 02–27374 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2002–13632]

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 27, 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 website 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., 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: Tire Identification and Record Keeping.

OMB Control Number: 2127–0050.

Affected Public: Tire Manufacturers, Dealers, and Distributors.

Form Number: The forms on which the information is to be recorded are provided by the tire manufacturers to both independent and non-independent dealers. In the case of independent dealers, the law specifies that they must record the tire identification number(s) of the tire(s) sold on a registration form, and hand that form to the tire purchaser. The purchaser is then free to complete the remaining information, place a stamp on the registration form, and return it to the tire manufacturer.

Abstract: Each tire manufacturer must collect and maintain records of the names and addresses of the first purchasers of new tires. All tire dealers and distributors must record the names and addresses of retail purchasers of new tires and the identification number(s) of the tires sold. A specific form is provided to tire dealers and distributors by tire manufacturers for recording this information. The completed forms are returned to the tire manufacturers where they are to remain for three years after the date received by the manufacturer. Additionally, motor vehicle manufacturers are required to record the names and addresses of the first purchasers of new motor vehicles, together with the identification numbers of the tires on the new vehicles.

Estimated Annual Burden: 747,500.

Estimated Number of Respondents: 37,400,000.

Issued on: October 23, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–27369 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket NHTSA–99–5087]

Rulemaking Program Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA Rulemaking Status Meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program.

DATES: The Agency's regular public meeting relating to its vehicle regulatory program will be held on Thursday, November 21, 2002, beginning at 9:45 a.m. and ending at approximately 12 p.m. at the Best Western Gateway International Hotel 9191 Wickham, Romulus, Michigan. Questions relating to the vehicle regulatory program must be submitted in writing with a diskette (Microsoft Word) by Wednesday, November 6, 2002, to the address shown below or by e-mail. If sufficient time is available, questions received after November 6, may be answered at the meeting. The individual, group or company submitting a questions(s) does not have to be present for the questions(s) to be answered. A consolidated list of the questions submitted by November 6, 2002, and the issues to be discussed will be posted on NHTSA's Web site *(www.nhtsa.dot.gov)* by Wednesday, November 20, 2002, and also will be available at the meeting. The agency will hold a second public meeting on November 21, devoted exclusively to a presentation of research and development programs. This meeting will begin at 1:30 p.m. and end at approximately 5 p.m. This meeting is described more fully in a separate announcement. The next NHTSA Public Meeting will take place on Thursday, April 3, 2003, at the Best Western Gateway International Hotel, Romulus, Michigan.

ADDRESSES: Questions for the November 21, NHTSA Rulemaking Status Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NVS–100, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, Fax Number (202) 366–4329, e-mail *dlopez@nhtsa.dot.gov.* The meeting will be held at the Best Western Gateway International Hotel, Romulus, Michigan 48174, the telephone number is 734–728–2800.

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds regular public meetings to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that relate directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Rulemaking Office. Transcripts of these meetings will be available for public inspection in the DOT Docket in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 80 to 150 pages) upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10 a.m. to 5 p.m. The transcript may also be accessed electronically at *http://dms.dot.gov,* at docket NHTSA–99–5087. Questions to be answered at the public meeting should be organized by categories to help us process the questions into an agenda form more efficiently.

Sample format:

I. Rulemaking

A. Crash avoidance

B. Crashworthiness

C. Other Rulemakings

II. Consumer Information

III. Miscellaneous

We plan to conduct this meeting differently than past meetings in an effort to have a greater dialogue with the public on rulemaking issues. Instead of responding individually to questions asking when we plan to publish a particular rulemaking action, we will respond to all of those questions on a single piece of paper. That piece of paper will be posted on our Web site by Wednesday, November 20 and distributed at the public meeting on November 21. Our intention is to move these meetings away from focusing on NHTSA's schedule for its rulemaking actions to discussions about the substantive progress on rulemaking actions and the agency's substantive plans, to the extent those have been determined.

For the November 21 meeting, NHTSA will begin by addressing any substantive issues raised in the questions submitted in response to this notice. We will then offer a presentation by Roger Kurrus on the research behind and reasons supporting the star ratings used in our New Car Assessment Program. NHTSA will then give a brief review of our plans for improving occupant protection in rear-end crashes. We expect this will form the basis for better dialogue with the attendees at these public meetings on rulemaking.

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of ''auxiliary aids'' (*e.g.*, sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366–1810, by COB Wednesday, November 20, 2002.

Issued: October 23, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–27370 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13533]

Notice of Receipt of Petition for Decision That Nonconforming 1995–2002 Harley Davidson Buell Motorcycles (All Models) Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–2002 Harley Davidson Buell motorcycles (all models) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–2002 Harley Davidson Buell motorcycles (all models) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 27, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket

Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.)

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Northern California Diagnostic Laboratories, Inc. of Napa, California (''NCDL'')(Registered Importer 92–011) has petitioned NHTSA to decide whether non-U.S. certified 1995–2002 Harley Davidson Buell motorcycles (all models) are eligible for importation into the United States. NCDL contends that these vehicles are eligible for importation under 49 U.S.C. 30141(a)(1)(A). The vehicles which NCDL believes are substantially similar are 1995–2002 Harley Davidson Buell motorcycles (all models) that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995–2002 Harley Davidson Buell motorcycles (all models) to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Specifically, the petitioner claims that non-U.S. certified 1995–2002 Harley Davidson Buell motorcycles (all models) are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials.*

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR Part 565 have been affixed to non-U.S. certified 1995–2002 Harley Davidson Buell motorcycles.

Petitioner additionally contends that the vehicles are capable of being altered to meet the following standards, in the manner indicated below:

Standard No. 108 Lamps, *Reflective Devices and Associated Equipment:* installation of headlamp bulbs, amber front side reflectors, and red rear side reflectors that conform to the requirements of the standard. The petitioner states that the vehicles are already equipped with a tail lamp system, a stop lamp system, a white license plate lamp, and turn signals that conform to the standard.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a label showing that the tires and rims are in conformity with the requirements of the standard.

Standard No. 123 *Motorcycle Controls and Displays:* modification of the speedometer to read in miles per hour. The petitioner states that the vehicles are already equipped with a supplemental engine stop control on the right handlebar and other controls and displays that are in conformity with the requirements of the standard.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 23, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–27389 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13538]

Notice of Receipt of Petition for Decision That Nonconforming 2002 Yamaha FJR 1300 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002 Yamaha FJR 1300 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 Yamaha FJR 1300 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is November 27, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401. 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.)

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to

conform to all applicable Federal motor vehicle safety standards.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Northern California Diagnostic Laboratories, Inc. of Napa, California (''NCDL'') (Registered Importer 92–011) has petitioned NHTSA to decide whether non-U.S. certified 2002 Yamaha FJR 1300 motorcycles are eligible for importation into the United States. NCDL contends that these vehicles are eligible for importation under 49 U.S.C. 30141(a)(1)(B) because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that non-U.S. certified 2002 Yamaha FJR 1300 motorcycles have safety features that comply with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.*

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR Part 565 have been affixed to non-U.S. certified 2002 Yamaha FJR 1300 motorcycles.

Petitioner additionally contends that the vehicles are capable of being altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of headlamp bulbs, amber front side reflectors, and red rear side reflectors that conform to the requirements of the standard. The petitioner states that the vehicles are already equipped with a tail lamp system, a stop lamp system, a white license plate lamp, and turn signals that conform to the standard.

Standard No. 120, *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a label showing that the tires and rims are in conformity with the requirements of the standard.

Standard No. 123 *Motorcycle Controls and Displays:* modification of the speedometer to read in miles per hour. The petitioner states that the vehicles are already equipped with a supplemental engine stop control on the right handlebar and other controls and displays that are in conformity with the requirements of the standard.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 23, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–27387 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13534]

Notice of Receipt of Petition for Decision That Nonconforming 1989–1993 Honda VFR 400 and RVF 400 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1989–1993 Honda VFR 400 and RVF 400 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1989–1993 Honda VFR 400 and RVF 400 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is November 27, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.)

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Northern California Diagnostic Laboratories, Inc. of Napa, California (''NCDL'') (Registered Importer 92–011) has petitioned NHTSA to decide whether non-U.S. certified 1989–1993 Honda VFR 400 and RVF 400 motorcycles are eligible for importation into the United States. NCDL contends that these vehicles are eligible for importation under 49 U.S.C. 30141(a)(1)(B) because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that non-U.S. certified 1989–1993 Honda VFR 400 and RVF 400 motorcycles have safety features that comply with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR part 565 have been affixed to non-U.S. certified 1989–1993 Honda VFR 400 and RVF 400 motorcycles.

Petitioner additionally contends that the vehicles are capable of being altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of headlamp bulbs, amber front side reflectors, and red rear side reflectors that conform to the requirements of the standard. The petitioner states that the vehicles are already equipped with a tail lamp system, a stop lamp system, a white license plate lamp, and turn signals that conform to the standard.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a label showing that the tires and rims are in conformity with the requirements of the standard.

Standard No. 123 *Motorcycle Controls and Displays:* modification of the speedometer to read in miles per hour. The petitioner states that the vehicles are already equipped with a supplemental engine stop control on the right handlebar and other controls and displays that are in conformity with the requirements of the standard.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 23, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–27388 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13539]

Notice of Receipt of Petition for Decision That Nonconforming 1989–1994 Honda CBR 250 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1989–1994 Honda CBR 250 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1989–1994 Honda CBR 250 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is November 27, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL 401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Northern California Diagnostic Laboratories, Inc. of Napa, California (''NCDL'')(Registered Importer 92–011) has petitioned NHTSA to decide whether non-U.S. certified 1989–1994 Honda CBR 250 motorcycles are eligible for importation into the United States. NCDL contends that these vehicles are eligible for importation under 49 U.S.C. 30141(a)(1)(B) because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that non-U.S. certified 1989–1994 Honda CBR 250 motorcycles have safety features that comply with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.*

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR Part 565 have been affixed to non-U.S.

certified 1989–1994 Honda CBR 250 motorcycles.

Petitioner additionally contends that the vehicles are capable of being altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of headlamp bulbs, amber front side reflectors, and red rear side reflectors that conform to the requirements of the standard. The petitioner states that the vehicles are already equipped with a tail lamp system, a stop lamp system, a white license plate lamp, and turn signals that conform to the standard.

Standard No. 120 Tire Selection and Rims for Vehicles other than Passenger Cars: Installation of a label showing that the tires and rims are in conformity with the requirements of the standard.

Standard No. 123 *Motorcycle Controls and Displays:* modification of the speedometer to read in miles per hour. The petitioner states that the vehicles are already equipped with a supplemental engine stop control on the right handlebar and other controls and displays that are in conformity with the requirements of the standard.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on October 23, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–27390 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration, Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 27, 2002.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (*See* Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.gov.*

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 22, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemption and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13129–N	.....	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.227	To authorize the one-time, one-way transportation in commerce of DOT-Specification UN1A1 drums for disposal containing a poison by inhalation material. (mode 1)
13135–N	RSPA–02–13521.	Space Systems/ Loral, Palo Alto, CA.	49 CFR 173.302	To authorize the transportation in commerce of a non-DOT specification pressure vessel as part of a satellite assembly containing Division 2.2. hazardous materials (modes 1, 4)
13137–N	RSPA–02–13520.	Atlas Air, Inc., Purchase, NY.	49 CFR 175.320	To authorize the transportation in commerce of Division 1.1., 1.2, 1.3 and 1.4 explosives, which are forbidden or exceed quantities presently authorized by cargo-only aircraft. (mode 4).

[FR Doc. 02–27391 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before November 12, 2002.

ADDRESS COMMENTS TO: Records Cancer, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center. Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 22, 2002.

R. Ryan Posten,

Exemptions Program Oficer, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
8760–M		Barton Solvents, Inc., Des Moines, IA [1]	8760
8944–M		AMKO A Service Company, Gnadenhutten, OH [2]	8944
11993–M	RSPA–97–3100	BREED Technologies, Inc., Lakeland, FL [3]	11993
12277–M	RSPA–95–5797	The Indian Sugar & General Engineering Corporation, Haryana, IN [4]	12277
12886–M	RSPA–02–11449	The Society of the Plastics Industry, Inc., Washington, DC [5]	12886
12953–M	RSPA–02–11835	Westinghouse Electric Company, Pittsburgh, PA [6]	12953
13036–M	RSPA–02–12789	Datum, Beverly, MA [7]	13036
13113–M	RSPA–02–13308	Dow AgroSciences L.L.C., Indianapolis, IN [8]	13113
13133–M		U.S. Department of Energy, Albuquerque, NM [9]	13133

[1] To modify the exemption to authorize the transportation of additional Class 3 materials in compartmented cargo tank motor vehicles.

[2] To modify the exemption to authorize the use of an additional cylinder with changes to the requalification/retest procedures and rail freight and cargo aircraft only as additional modes of transportation.

[3] To modify the exemption to authorize the transportation of Division 1.4G and Class 9 materials in non-DOT specification cylinders for use as components of automobile safety restraint systems.

[4] To modify the exemption to authorize an updated design of the non-DOT specification pressure vessel for the transportation of Division 2.1, 2.2 and additional 2.3 materials.

[5] To reissue the exemption originally issued on an emergency basis for the transportation of a Division 5.2 material without subsidiary hazard labels.

[6] To modify the exemption to authorize an updated description of the Class 7 material to be transported via rail freight and motor vehicle.

[7] To reissue the exemption originally issued on an emergency basis for the transportation of DOT Specification 3E cylinders containing hydrogen in metal hydride as an integral part of the hydrogen maser.

[8] To reissue the exemption originally issued on an emergency basis for the transportation of Division 6.1 materials in DOT Specification cargo tank motor vehicles and portable tanks.

[9] To reissue the exemption originally issued on an emergency basis for the transportation of up to 25 grams of unapproved explosives, classed as Division 1.4E, when shipped in a special shipping container.

[FR Doc. 02–27392 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 18, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 27, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0071.

Form Number: IRS Form 2120.

Type of Review: Extension.

Title: Multiple Support Declaration.

Description: A taxpayer who pays more than 10%, but less than 50%, of the support for an individual may claim that individual as a dependent provided the taxpayer attaches declarations from anyone else providing at least 10% support stating that they will not claim the dependent. This form is used to show that the other contributors have agreed not to claim the individual as a dependent.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 11,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Minutes
Recordkeeping	6
Learning about the law or the form	4
Preparing the form	7
Copying, assembling, and sending the form to the IRS	13

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 112,500 hours.

OMB Number: 1545–0108.

Form Number: IRS Form 1096.

Type of Review: Extension.

Title: Annual Summary and Transmittal of U.S. Information Returns.

Description: Form 1096 is sued to transmit information returns (Forms 1099, 1098, 5498, a W–2G) to the IRS Service Centers. Under Internal Revenue Code (IRC) section 6041 and related sections, a separate Form 1096 is used for each type of return to the service center by the payer. It is used by IRS to summarize and categorize the transmitted forms.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 4,023,036.

Estimated Burden Hours Per Respondent: 13 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,016,812 hours.

OMB Number: 1545–0257.

Form Number: IRS Forms 8109, 8109–B, and 8109–C.

Type of Review: Extension.

Title: Federal Tax Deposit Coupon (8109 and 8109–B); and Form FTD Address Change (Form 8109–C).

Description: Federal Tax Deposit Coupons are used to deposit certain types of taxes at authorized depositaries. Coupons are sent to the IRS Centers for crediting to taxpayers' accounts. Data is used by the IRS to make the credit and to verify tax deposits claimed on the returns. The FTD Address Change is used to change the address on the FTD coupons. All taxpayers required to make deposits are affected.

Respondents: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 9,300,700.

Estimated Burden Hours Per Respondent:

	Minutes
Form 8109	2
Form 8109–B	3
Form 8109–C	1

Frequency of Response: On occasion, Weekly, Monthly, Other (semiweekly).

Estimated Total Reporting Burden: 1,841,607 hours.

OMB Number: 1545–0718.

Form Number: IRS Form 941–M.

Type of Review: Extension.

Title: Employer's Monthly Federal Tax Return.

Description: Form 941–M is used by certain employers to report payroll taxes on a monthly rather than quarterly basis. Employers who have failed to file Form 941 or who have failed to deposit as required are notified by the District Director that they must file Form 941–M monthly.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	12 hr., 26 min.
Learning about the law or the form.	35 min.
Preparing, copying, assembling, and sending the form to the IRS.	49 min.

Frequency of Response: Monthly.

Estimated Total Reporting/ Recordkeeping Burden: 166,320 hours.

OMB Number: 1545–1029.

Regulation Project Number: IA–83–90 Final.

Type of Review: Extension.

Title: Disclosure of Tax Return Information or Purposes of Quality or Peer Review; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer.

Description: These regulations govern the circumstances under which tax return information may be disclosed for purposes of conducting quality or peer reviews, and disclosures that are necessary because of the tax return preparer's death or incapacity.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 250,000.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Estimated Total Reporting/ Recordkeeping Burden: 250,000 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental PRA Clearance Officer.

[FR Doc. 02–27303 Filed 10–25–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 18, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 27, 2002 to be assured of consideration.

Departmental Offices/Office of the Assistant Secretary (Financial Institutions)/First Accounts Program

OMB Number: 1505–0188.

Form Number: None.

Type of Review: Extension.

Title: First Accounts Program Agreement for Grants.

Description: The Department of the Treasury (Treasury) seeks to continue to collect financial and project performance information from First Accounts grantees. Respondents are Non-Profit Organizations, For-Profit Organizations and a Local Government. The information collected will be used to verify grantee compliance with the terms of the Grant Agreement entered into between Treasury and each grantee.

Respondents: Not-for-profit institutions, Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 15.

Estimated Burden Hours Per Respondent/Recordkeeper: 25 hours.

Frequency of Response: On Occasion, Quarterly, Annually.

Estimated Total Reporting/ Recordkeeping Burden: 555 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices,

Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental PRA Clearance Officer.

[FR Doc. 02–27304 Filed 10–25–02; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–165–84]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, FI–165–84, Below-Market Loans (1.7872–11(g)(l) and 1.7872–11(g)(3)).

DATES: Written comments should be received on or before December 27, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Below-Market Loans.

OMB Number: 1545–0913.

Regulation Project Number: FI–165–84 (Notice of Proposed Rulemaking).

Abstract: Internal Revenue Code section 7872 recharacterizes a below-market loan as a market rate loan and an additional transfer by the lender to the borrower equal to the amount of imputed interest. The regulation requires both the lender and the borrower to attach a statement to their respective income tax returns for years in which they have imputed income or claim imputed deductions under Code section 7872.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 1,631,202.

Estimated Time Per Respondent: 18 min.

Estimated Total Annual Burden Hours: 481,722.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 21, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–27296 Filed 10–25–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
October 28, 2002

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Electing Mark to Market for Marketable Stock; Hearing Cancellation; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112306–00]

RIN 1545–AY17

Electing Mark to Market for Marketable Stock; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document cancels the public hearing on proposed regulations containing procedures for certain United States persons holding marketable stock in a passive foreign investment company (PFIC) to elect mark to market treatment for that stock under section 1296 and related provisions of sections 1291 and 1295.

DATES: The public hearing originally scheduled for Wednesday, November 6, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, July 31, 2002 (67 FR 49634), announced that a public hearing was scheduled for Wednesday, November 6, 2002, at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 1291 of the Internal Revenue Code. The outlines of topics to be addressed at the hearing were due on Wednesday, October 16, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, October 22, 2002, no one has requested to speak. Therefore, the public hearing scheduled for Wednesday, November 6, 2002, is cancelled.

LaNita Van Dyke,

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

[FR Doc. 02–27295 Filed 10–25–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
October 28, 2002

Part III

Department of the Treasury

31 CFR Part 5

Treasury Debt Collection; Final and Proposed Rules

DEPARTMENT OF THE TREASURY

31 CFR Part 5

RIN: 1505–AA90

Treasury Debt Collection

AGENCY: Department of the Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: This rule revises the Department of the Treasury's debt collection regulations to conform to the Debt Collection Improvement Act of 1996, the revised Federal Claims Collection Standards, and other laws applicable to the collection of nontax debts owed to Treasury. This rule also revises Treasury's regulations governing the offset of Treasury-issued payments to collect debts owed to other Federal agencies.

DATES: This rule is effective November 27, 2002; comments must be received on or before November 27, 2002.

ADDRESSES: Send comments to Cathy Thomas, Office of the Deputy Chief Financial Officer, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Attention: Metropolitan Square, Room 6228, Washington, DC 20220. Comments also may be submitted by electronic mail to *cathy.thomas@do.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Cathy Thomas, Office of the Deputy Chief Financial Officer, at (202) 622–0817, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. This document is available for downloading from the Department of the Treasury's Financial Management Service web site at the following address: *http://www.fms.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

This rule revises the Department of the Treasury's (Treasury Department's) debt collection regulations found at 31 CFR part 5 to conform to the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321, 1358 (Apr. 26, 1996), the revised Federal Claims Collection Standards, 31 CFR Chapter IX (parts 900 through 904), and other laws applicable to the collection of nontax debt owed to the Government.

This regulation provides procedures for the collection of nontax debts owed to Treasury entities. Treasury adopts the Government-wide debt collection standards promulgated by the Departments of the Treasury and Justice, known as the Federal Claims Collection Standards (FCCS), as revised on November 22, 2000 (65 FR 70390), and supplements the FCCS by prescribing procedures consistent with the FCCS, as necessary and appropriate for Treasury Department operations. Treasury entities may, but are not required to, promulgate additional policies and procedures consistent with this regulation, the FCCS, and other applicable Federal laws, policies, and procedures. *See, for example,* the debt collection regulations governing the collection of overpayments under certain District of Columbia retirement plans (66 FR 36703, July 13, 2001). This regulation also provides the procedures for the collection of debts owed to other Federal agencies when a request for offset is received by the Treasury Department.

This regulation does not apply to the collection of tax debts, which is governed by the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) and regulations, policies and procedures issued by the Internal Revenue Service. This regulation does not apply to the Treasury Department's Financial Management Service when acting on behalf of other Federal agencies and states to collect delinquent debt referred to the Financial Management Service as required or authorized by Federal law for collection action. *See* 31 U.S.C. 3711(g), 3716, and 3720A. Regulations governing this centralized collection of debts by the Financial Management Service are found at 31 CFR part 285.

Unlike the Treasury Department's current regulation (*see, for example,* 31 CFR 5.3), this regulation does not contain a section regarding the delegation of debt collection authority within the Treasury Department. The delegation is now contained in Treasury Directive 34–02, Credit Management and Debt Collection (*see http://www.treas.gov/regs)*, and does not need to be included in the revised regulation.

Nothing in this regulation precludes the use of collection remedies not contained in this regulation. For example, Treasury entities may collect unused travel advances through setoff of an employee's pay under 5 U.S.C. 5705. Treasury entities and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law.

Section Analysis

Subpart A—Sections 5.1 through 5.3

Subpart A of this regulation addresses the general provisions applicable to the collection of nontax debts owed to the bureaus of the Department of the Treasury, the Office of Inspector General, and the Office of Inspector General for Tax Administration (collectively referred to as ''Treasury entities''). The Departmental Offices, one of Treasury's bureaus, includes the Office of D.C. Pensions, the Community Development Financial Institution Fund, the Executive Office of Asset Forfeiture, and the Office of Foreign Assets Control. The other bureaus are the Bureau of Public Debt; Bureau of Engraving and Printing; U.S. Mint; Secret Service; Customs Service; Financial Management Service; Internal Revenue Service; Bureau of Alcohol, Tobacco, and Firearms; Office of Comptroller of the Currency; the Office of Thrift Supervision; the Federal Law Enforcement Training Center; and the Financial Crimes Enforcement Network.

As stated in section 5.2 of this interim rule, nothing in this regulation requires a Treasury entity to duplicate notices or administrative proceedings required by contract, this regulation or other laws or regulations. Thus, for example, a Treasury entity is not required to provide a debtor with two hearings on the same issue merely because the entity uses two different collection tools, each of which requires that the debtor be provided with a hearing.

Subpart B—Sections 5.4 through 5.19

Subpart B of this regulation describes the procedures to be followed by Treasury entities when collecting debts owed to the Treasury Department. Among other things, subpart B outlines the due process procedures Treasury entities are required to follow when using offset (administrative, tax refund and salary) to collect a debt, when garnishing a debtor's wages, or before reporting a debt to a credit bureau. Specifically, Treasury entities are required to provide debtors with notice of the amount and type of debt, the intended collection action to be taken, how a debtor may pay the debt or make alternate repayment arrangements, how a debtor may review documents related to the debt, how a debtor may dispute the debt, and the consequences to the debtor if the debt is not paid. Unlike the Treasury Department's current regulation (*see, for example,* 31 CFR 5.11), this regulation does not require Treasury entities to send notices by certified mail. The Treasury Department has determined that the certified mail requirement imposes an unnecessary administrative burden and expense. Notices may be sent by first-class mail, and if not returned by the United States Postal Service, Treasury entities may presume that the notice was received. *See Rosenthal* v. *Walker,* 111 U.S. 185 (1884); *Mahon* v. *Credit Bureau of*

Placer County Incorporated, 171 F.3d 1197 (9th Cir. 1999). Nothing in this regulation precludes a Treasury entity from sending a notice by certified mail if appropriate or required by statute.

Subpart B also explains the circumstances under which Treasury entities may waive interest, penalties and administrative costs.

This regulation updates Treasury Department procedures to reflect changes required by the DCIA. For example, the DCIA centralized the use of offset by requiring agencies to refer debts delinquent more than 180 days to the Financial Management Service for offset. *See* 31 U.S.C. 3716(c)(6). The Financial Management Service disburses nearly 950 million Federal payments annually and is required to offset payments to persons who owe delinquent debts to the Government. Prior to the DCIA, agencies were required to contact the particular agency issuing a payment in order to initiate the offset of a Federal payment. This regulation also incorporates procedures for several new collection remedies authorized by the DCIA, such as administrative wage garnishment and barring delinquent debtors from obtaining additional Federal loan assistance.

Unlike the Treasury Department's current regulation (*see, for example*, 31 CFR 5.3), this regulation no longer specifies the dollar threshold for which legal approval of compromises or suspension or termination of debt collection activity is required. This information is contained in Treasury Directive 34–02, Credit Management and Debt Collection, which may be found at *http://www.treas.gov/regs.*

Subpart C—Sections 5.20 and 5.21

Subpart C of this regulation describes the procedures to be followed when a Federal agency, other than a Treasury entity, would like to use the offset process to collect a debt from a nontax payment issued by the Treasury Department as a payment agency. This is distinguished from the offset of payments *disbursed* by the Treasury Department's Financial Management Service in its capacity as disbursing agency for the Federal Government. The offset of payments disbursed by the Financial Management Service, including tax refund payments issued by the Internal Revenue Service and social security benefit payments issued by the Social Security Administration, is conducted through the Treasury Offset Program and is governed by regulations found at 31 CFR part 285, as well as agency-specific regulations. Subpart C of this regulation governs the process for offsets that occur on an ad hoc, case-by-case basis to collect debts from payments made by the Treasury Department to its employees, its vendors, and others to whom the Treasury Department is required or authorized to pay. While centralized offset through the Treasury Offset Program is the Government's primary offset collection tool, this regulation provides the procedures to be used when centralized offset is otherwise not available or appropriate. An agency's use of the non-centralized administrative offset process shall not provide grounds to invalidate any offset on the basis that centralized offset was not used.

Regulatory Analysis

E.O. 12866, Regulatory Review

This rule is not a significant regulatory action as defined in Executive Order 12866. Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act do not apply.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, the rule will only affect persons who owe delinquent nontax debts to the Treasury Department and other Federal agencies. Accordingly, a regulatory flexibility analysis is not required.

Special Analyses

The Treasury Department is promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553 (the ''APA''). The Treasury Department has determined that a comment period is unnecessary because the procedures contained in this interim rule are mandated by law and by regulations promulgated by the Departments of Treasury and Justice. The public is invited to submit comments on the interim rule, which will be taken into account before a final rule is issued.

List of Subjects in 31 CFR Part 5

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Government employee, Hearing and appeal procedures, Pay administration, Salaries, Wages.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 5 is revised to read as follows:

PART 5—TREASURY DEBT COLLECTION

Subpart A—General Provisions

Sec.
5.1 What definitions apply to the regulations in this part?
5.2 Why is the Treasury Department issuing these regulations and what do they cover?
5.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

Subpart B—Procedures To Collect Treasury Debts

5.4 What notice will Treasury entities send to a debtor when collecting a Treasury debt?
5.5 How will Treasury entities add interest, penalty charges, and administrative costs to a Treasury debt?
5.6 When will Treasury entities allow a debtor to pay a Treasury debt in installments instead of one lump sum?
5.7 When will Treasury entities compromise a Treasury debt?
5.8 When will Treasury entities suspend or terminate debt collection on a Treasury debt?
5.9 When will Treasury entities transfer a Treasury debt to the Treasury Department's Financial Management Service for collection?
5.10 How will Treasury entities use administrative offset (offset of non-tax Federal payments) to collect a Treasury debt?
5.11 How will Treasury entities use tax refund offset to collect a Treasury debt?
5.12 How will Treasury entities offset a Federal employee's salary to collect a Treasury debt?
5.13 How will Treasury entities use administrative wage garnishment to collect a Treasury debt from a debtor's wages?
5.14 How will Treasury entities report Treasury debts to credit bureaus?
5.15 How will Treasury entities refer Treasury debts to private collection agencies?
5.16 When will Treasury entities refer Treasury debts to the Department of Justice?
5.17 Will a debtor who owes a Treasury debt be ineligible for Federal loan assistance or Federal licenses, permits or privileges?
5.18 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death, or disability?
5.19 Will Treasury entities issue a refund if money is erroneously collected on a debt?

Subpart C—Procedures for Offset of Treasury Department Payments To Collect Debts Owed to Other Federal Agencies

5.20 How do other Federal agencies use the offset process to collect debts from payments issued by a Treasury entity?
5.21 What does a Treasury entity do upon receipt of a request to offset the salary of a Treasury entity employee to collect a

debt owed by the employee to another Federal agency?
Appendix A to Part 5—Treasury Directive 34–01—Waiving Claims Against Treasury Employees for Erroneous Payments

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3717, 3718, 3720A, 3720B, 3720D.

Subpart A—General Provisions

§ 5.1 What definitions apply to the regulations in this part?

As used in this part:

Administrative offset or *offset* means withholding funds payable by the United States (including funds payable by the United States on behalf of a State Government) to, or held by the United States for, a person to satisfy a debt owed by the person. The term ''administrative offset'' includes, but is not limited to, the offset of Federal salary, vendor, retirement, and Social Security benefit payments. The terms ''centralized administrative offset'' and ''centralized offset'' refer to the process by which the Treasury Department's Financial Management Service offsets Federal payments through the Treasury Offset Program.

Administrative wage garnishment means the process by which a Federal agency orders a non-Federal employer to withhold amounts from a debtor's wages to satisfy a debt, as authorized by 31 U.S.C. 3720D, 31 CFR 285.11, and this part.

Agency or *Federal agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Creditor agency means any Federal agency that is owed a debt.

Debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person. As used in this part, the term ''debt'' does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

Debtor means a person who owes a debt to the United States.

Delinquent debt means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

Delinquent Treasury debt means a delinquent debt owed to a Treasury entity.

Disposable pay has the same meaning as that term is defined in 5 CFR 550.1103.

Employee or *Federal employee* means a current employee of the Treasury Department or other Federal agency, including a current member of the Armed Forces, Reserve of the Armed Forces of the United States, or the National Guard.

FCCS means the Federal Claims Collection Standards, which were jointly published by the Departments of the Treasury and Justice and codified at 31 CFR parts 900—904.

Financial Management Service means the Financial Management Service, a bureau of the Treasury Department, which is responsible for the centralized collection of delinquent debts through the offset of Federal payments and other means.

Payment agency or *Federal payment agency* means any Federal agency that transmits payment requests in the form of certified payment vouchers, or other similar forms, to a disbursing official for disbursement. The ''payment agency'' may be the agency that employs the debtor. In some cases, the Treasury Department may be both the creditor agency and payment agency.

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency.

Salary offset means a type of administrative offset to collect a debt owed by a Federal employee from the current pay account of the employee.

Secretary means the Secretary of the Treasury.

Tax refund offset is defined in 31 CFR 285.2(a).

Treasury debt means a debt owed to a Treasury entity by a person.

Treasury Department means the United States Department of the Treasury.

Treasury entity means the Office of Inspector General, the Office of Inspector General for Tax Administration, or a bureau of the Treasury Department, including the Departmental Offices, responsible for the collection of the applicable Treasury debt. Departmental Offices include, but are not limited to, the Office of D.C. Pensions, the Community Development Financial Institution Fund, the Executive Office of Asset Forfeiture, and the Office of Foreign Assets Control. Other bureaus include, but are not limited to, the Bureau of Public Debt; Bureau of Engraving and Printing; U.S. Mint; U.S. Secret Service; Customs Service; Financial Management Service; Internal Revenue Service; Bureau of Alcohol, Tobacco, and Firearms; Office of Comptroller of the Currency; the Office of Thrift Supervision; Federal Law Enforcement Training Center; and the Financial Crimes Enforcement Network.

§ 5.2 Why is the Treasury Department issuing these regulations and what do they cover?

(a) *Scope.* This part provides procedures for the collection of Treasury debts. This part also provides procedures for collection of other debts owed to the United States when a request for offset of a Treasury payment is received by the Treasury Department from another agency (for example, when a Treasury Department employee owes a debt to the United States Department of Education).

(b) *Applicability.* (1) This part applies to the Treasury Department when collecting a Treasury debt, to persons who owe Treasury debts, and to Federal agencies requesting offset of a payment issued by the Treasury Department as a payment agency (including salary payments to Treasury Department employees).

(2) This part does not apply to tax debts nor to any debt for which there is an indication of fraud or misrepresentation, as described in § 900.3 of the FCCS, unless the debt is returned by the Department of Justice to the Treasury Department for handling.

(3) This part does not apply to the Financial Management Service when acting on behalf of other Federal agencies and states to collect delinquent debt referred to the Financial Management Service for collection action as required or authorized by Federal law. *See* 31 CFR part 285.

(4) Nothing in this part precludes collection or disposition of any debt under statutes and regulations other than those described in this part. *See, for example,* 5 U.S.C. 5705, Advancements and Deductions, which authorizes Treasury entities to recover travel advances by offset of up to 100% of a Federal employee's accrued pay. *See, also,* 5 U.S.C. 4108, governing the collection of training expenses. To the extent that the provisions of laws, other regulations, and Treasury Department enforcement policies differ from the provisions of this part, those provisions of law, other regulations, and Treasury Department enforcement policies apply to the remission or mitigation of fines, penalties, and forfeitures, and debts arising under the tariff laws of the United States, rather than the provisions of this part.

(c) *Additional policies and procedures.* Treasury entities may, but

are not required to, promulgate additional policies and procedures consistent with this part, the FCCS, and other applicable Federal law, policies, and procedures.

(d) *Duplication not required.* Nothing in this part requires a Treasury entity to duplicate notices or administrative proceedings required by contract, this part, or other laws or regulations.

(e) *Use of multiple collection remedies allowed.* Treasury entities and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law. This part is intended to promote aggressive debt collection, using for each debt all available collection remedies. These remedies are not listed in any prescribed order to provide Treasury entities with flexibility in determining which remedies will be most efficient in collecting the particular debt.

§ 5.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

This part adopts and incorporates all provisions of the FCCS. This part also supplements the FCCS by prescribing procedures consistent with the FCCS, as necessary and appropriate for Treasury Department operations.

Subpart B—Procedures To Collect Treasury Debts

§ 5.4 What notice will Treasury entities send to a debtor when collecting a Treasury debt?

(a) *Notice requirements.* Treasury entities shall aggressively collect Treasury debts. Treasury entities shall promptly send at least one written notice to a debtor informing the debtor of the consequences of failing to pay or otherwise resolve a Treasury debt. The notice(s) shall be sent to the debtor at the most current address of the debtor in the records of the Treasury entity collecting the debt. Generally, before starting the collection actions described in §§ 5.5 and 5.9 through 5.17 of this part, Treasury entities will send no more than two written notices to the debtor. The purpose of the notice(s) is to explain why the debt is owed, the amount of the debt, how a debtor may pay the debt or make alternate repayment arrangements, how a debtor may review documents related to the debt, how a debtor may dispute the debt, the collection remedies available to Treasury entities if the debtor refuses to pay the debt, and other consequences to the debtor if the debt is not paid. Except as otherwise provided in paragraph (b) of this section, the written notice(s) shall explain to the debtor:

(1) The nature and amount of the debt, and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment should be made to avoid such charges, and that such assessments must be made unless excused in accordance with 31 CFR 901.9 (*see* § 5.5 of this part);

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (a)(6) of this section;

(4) The Treasury entity's willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to the Treasury entity (*see* § 5.6 of this part);

(5) The name, address, and telephone number of a contact person or office within the Treasury entity;

(6) The Treasury entity's intention to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) *Offset.* Offset the debtor's Federal payments, including income tax refunds, salary, certain benefit payments (such as Social Security), retirement, vendor, travel reimbursements and advances, and other Federal payments (*see* §§ 5.10 through 5.12 of this part);

(ii) *Private collection agency.* Refer the debt to a private collection agency (*see* § 5.15 of this part);

(iii) *Credit bureau reporting.* Report the debt to a credit bureau (*see* § 5.14 of this part);

(iv) *Administrative wage garnishment.* Garnish the debtor's wages through administrative wage garnishment (*see* § 5.13 of this part);

(v) *Litigation.* Refer the debt to the Department of Justice to initiate litigation to collect the debt (*see* § 5.16 of this part);

(vi) *Treasury Department's Financial Management Service.* Refer the debt to the Financial Management Service for collection (*see* § 5.9 of this part);

(7) That Treasury debts over 180 days delinquent must be referred to the Financial Management Service for the collection actions described in paragraph (a)(6) of this section (*see* § 5.9 of this part);

(8) How the debtor may inspect and copy records related to the debt;

(9) How the debtor may request a review of the Treasury entity's determination that the debtor owes a debt and present evidence that the debt is not delinquent or legally enforceable (*see* §§ 5.10(c) and 5.11(c) of this part);

(10) How a debtor may request a hearing if the Treasury entity intends to garnish the debtor's private sector (*i.e.*, non-Federal) wages (*see* § 5.13(a) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That the timely filing of a request for a hearing on or before the 15th business day following the date of the notice will stay the commencement of administrative wage garnishment, but not necessarily other collection procedures; and

(iii) The name and address of the office to which the request for a hearing should be sent.

(11) How a debtor who is a Federal employee subject to Federal salary offset may request a hearing (*see* § 5.12(e) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That the timely filing of a request for a hearing on or before the 15th calendar day following receipt of the notice will stay the commencement of salary offset, but not necessarily other collection procedures;

(iii) The name and address of the office to which the request for a hearing should be sent;

(iv) That the Treasury entity will refer the debt to the debtor's employing agency or to the Financial Management Service to implement salary offset, unless the employee files a timely request for a hearing;

(v) That a final decision on the hearing, if requested, will be issued at the earliest practical date, but not later than 60 days after the filing of the request for a hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(vi) That any knowingly false or frivolous statements, representations, or evidence may subject the Federal employee to penalties under the False Claims Act (31 U.S.C. 3729–3731) or other applicable statutory authority, and criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or other applicable statutory authority;

(vii) That unless prohibited by contract or statute, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and (viii) That proceedings with respect to such debt are governed by 5 U.S.C. 5514 and 31 U.S.C. 3716;

(12) How the debtor may request a waiver of the debt, if applicable (*see, for example,* Treasury Directive 34–01 (Waiving Claims Against Treasury Employees for Erroneous Payments), set forth at Appendix A of this part and at *http://www.treas.gov/regs*);

(13) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (*see http://www.irs.gov*)

(14) How the debtor may exercise other statutory or regulatory rights and remedies available to the debtor;

(15) That certain debtors may be ineligible for Federal Government loans, guaranties and insurance (*see* 31 U.S.C. 3720B, 31 CFR 285.13, and § 5.17(a) of this part);

(16) If applicable, the Treasury entity's intention to suspend or revoke licenses, permits or privileges (*see* § 5.17(b) of this part); and

(17) That the debtor should advise the Treasury entity of a bankruptcy proceeding of the debtor or another person liable for the debt being collected.

(b) *Exceptions to notice requirements.* A Treasury entity may omit from a notice to a debtor one or more of the provisions contained in paragraphs (a)(6) through (a)(17) of this section if the Treasury entity, in consultation with its legal counsel, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(c) *Respond to debtors; comply with FCCS.* Treasury entities should respond promptly to communications from debtors and comply with other FCCS provisions applicable to the administrative collection of debts. *See* 31 CFR part 901.

§ 5.5 How will Treasury entities add interest, penalty charges, and administrative costs to a Treasury debt?

(a) *Assessment and notice.* Treasury entities shall assess interest, penalties and administrative costs on Treasury debts in accordance with the provisions of 31 U.S.C. 3717 and 31 CFR 901.9, on Treasury debts. Interest shall be charged in accordance with the requirements of 31 U.S.C. 3717(a). Penalties shall accrue at the rate of 6% per year, or such other higher rate as authorized by law. Administrative costs, that is the costs of processing and handling a delinquent debt, shall be determined by the Treasury entity collecting the Treasury debt. Treasury entities may have additional policies regarding how interest, penalties, and administrative costs are assessed on particular types of debts. Treasury entities are required to explain in the notice to the debtor described in § 5.4 of this part how interest, penalties, costs, and other charges are assessed, unless the requirements are included in a contract or repayment agreement.

(b) *Waiver of interest, penalties, and administrative costs.* Unless otherwise required by law, Treasury entities may not charge interest if the amount due on the debt is paid within 30 days after the date from which the interest accrues. *See* 31 U.S.C. 3717(d). Treasury entities may waive interest, penalties, and administrative costs, or any portion thereof, when it would be against equity and good conscience or not in the Treasury entity's best interest to collect such charges, in accordance with Treasury guidelines for waiving claims against Treasury employees for erroneous overpayments. *See* Treasury Directive 34–01 (Waiving Claims Against Treasury Employees for Erroneous Payments) set forth at Appendix A of this part and at *http://www.treas.gov/regs.* Legal counsel approval is not required to waive such charges. Cf., §§ 5.7 and 5.8 of this part, which require legal counsel approval when compromising a debt or terminating debt collection activity on a debt.

(c) *Accrual during suspension of debt collection.* In most cases, interest, penalties and administrative costs will continue to accrue during any period when collection has been suspended for any reason (for example, when the debtor has requested a hearing). Treasury entities may suspend accrual of any or all of these charges when accrual would be against equity and good conscience or not in the Treasury entity's best interest, in accordance with Treasury guidelines for waiving claims against Treasury employees for erroneous overpayments. *See* Treasury Directive 34–01 (Waiving Claims Against Treasury Employees for Erroneous Payments), set forth at Appendix A of this part and *http://www.treas.gov/regs.*

§ 5.6 When will Treasury entities allow a debtor to pay a Treasury debt in installments instead of one lump sum?

If a debtor is financially unable to pay the debt in one lump sum, a Treasury entity may accept payment of a Treasury debt in regular installments, in accordance with the provisions of 31 CFR 901.8 and the Treasury entity's policies and procedures.

§ 5.7 When will Treasury entities compromise a Treasury debt?

If a Treasury entity cannot collect the full amount of a Treasury debt, the Treasury entity may compromise the debt in accordance with the provisions of 31 CFR part 902 and the Treasury entity's policies and procedures. Legal counsel approval to compromise a Treasury debt is required as described in Treasury Directive 34–02 (Credit Management and Debt Collection), which may be found at *http://www.treas.gov/regs.*

§ 5.8 When will Treasury entities suspend or terminate debt collection on a Treasury debt?

If, after pursuing all appropriate means of collection, a Treasury entity determines that a Treasury debt is uncollectible, the Treasury entity may suspend or terminate debt collection activity in accordance with the provisions of 31 CFR part 903 and the Treasury entity's policies and procedures. Legal counsel approval to terminate debt collection activity is required as described in Treasury Directive 34–02 (Credit Management and Debt Collection), which may be found at *http://www.treas.gov/regs.*

§ 5.9 When will Treasury entities transfer a Treasury debt to the Treasury Department's Financial Management Service for collection?

(a) Treasury entities will transfer any eligible debt that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as ''cross-servicing.'' *See* 31 U.S.C. 3711(g) and 31 CFR 285.12. Treasury entities may transfer debts delinquent 180 days or less to the Financial Management Service in accordance with the procedures described in 31 CFR 285.12. The Financial Management Service takes appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and the collection action to be taken. *See* 31 CFR 285.12(b)(2). Appropriate action includes, but is not limited to, contact with the debtor, referral of the debt to the Treasury Offset Program, private collection agencies or the Department of Justice, reporting of the debt to credit bureaus, and administrative wage garnishment.

(b) At least sixty (60) days prior to transferring a Treasury debt to the Financial Management Service, Treasury entities will send notice to the debtor as required by § 5.4 of this part. Treasury entities will certify to the Financial Management Service, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection. In addition, Treasury entities will certify their compliance with all applicable due process and other requirements as described in this part and other Federal laws. *See* 31 CFR 285.12(i) regarding the certification requirement.

(c) As part of its debt collection process, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by administrative and tax refund offset. *See* 31 CFR 285.12(g). The Treasury Offset Program is a centralized offset program administered by the Financial Management Service to collect delinquent debts owed to Federal agencies and states (including past-due child support). Under the Treasury Offset Program, before a Federal payment is disbursed, the Financial Management Service compares the name and taxpayer identification number (TIN) of the payee with the names and TINs of debtors that have been submitted by Federal agencies and states to the Treasury Offset Program database. If there is a match, the Financial Management Service (or, in some cases, another Federal disbursing agency) offsets all or a portion of the Federal payment, disburses any remaining payment to the payee, and pays the offset amount to the creditor agency. Federal payments eligible for offset include, but are not limited to, income tax refunds, salary, travel advances and reimbursements, retirement and vendor payments, and Social Security and other benefit payments.

§ 5.10 How will Treasury entities use administrative offset (offset of non-tax Federal payments) to collect a Treasury debt?

(a) *Centralized administrative offset through the Treasury Offset Program.* (1) In most cases, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by the offset of Federal payments. *See* § 5.9(c) of this part. If not already transferred to the Financial Management Service under § 5.9 of this part, Treasury entities will refer any eligible debt over 180 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. *See* 31 U.S.C. 3716(c)(6); 31 CFR part 285, subpart A; and 31 CFR 901.3(b). Treasury entities may refer any eligible debt less than 180 days delinquent to the Treasury Offset Program for offset.

(2) At least sixty (60) days prior to referring a debt to the Treasury Offset Program, in accordance with paragraph (a)(1) of this section, Treasury entities will send notice to the debtor in accordance with the requirements of § 5.4 of this part. Treasury entities will certify to the Financial Management Service, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, Treasury entities will certify their compliance with the requirements described in this part.

(b) *Non-centralized administrative offset for Treasury debts.* (1) When centralized administrative offset through the Treasury Offset Program is not available or appropriate, Treasury entities may collect past-due, legally enforceable Treasury debts through non-centralized administrative offset. *See* 31 CFR 901.3(c). In these cases, Treasury entities may offset a payment internally or make an offset request directly to a Federal payment agency. If the Federal payment agency is another Treasury entity, the Treasury entity making the request shall do so through the Deputy Chief Financial Officer as described in § 5.20(c) of this part.

(2) At least thirty (30) days prior to offsetting a payment internally or requesting a Federal payment agency to offset a payment, Treasury entities will send notice to the debtor in accordance with the requirements of § 5.4 of this part. When referring a debt for offset under this paragraph (b), Treasury entities making the request will certify, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, Treasury entities will certify their compliance with these regulations concerning administrative offset. *See* 31 CFR 901.3(c)(2)(ii).

(c) *Administrative review.* The notice described in § 5.4 of this part shall explain to the debtor how to request an administrative review of a Treasury entity's determination that the debtor owes a Treasury debt and how to present evidence that the debt is not delinquent or legally enforceable. In addition to challenging the existence and amount of the debt, the debtor may seek a review of the terms of repayment. In most cases, Treasury entities will provide the debtor with a ''paper hearing'' based upon a review of the written record, including documentation provided by the debtor. Treasury entities shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the Treasury entity determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although Treasury entities should carefully document all significant matters discussed at the hearing. Treasury entities may suspend collection through administrative offset and/or other collection actions pending the resolution of a debtor's dispute. Each Treasury entity will have its own policies and procedures concerning the administrative review process consistent with the FCCS and the regulations in this section.

(d) *Procedures for expedited offset.* Under the circumstances described in 31 CFR 901.3(b)(4)(iii), Treasury entities may effect an offset against a payment to be made to the debtor prior to sending a notice to the debtor, as described in § 5.4 of this part, or completing the procedures described in paragraph (b)(2) and (c) of this section. Treasury entities shall give the debtor notice and an opportunity for review as soon as practicable and promptly refund any money ultimately found not to have been owed to the Government.

§ 5.11 How will Treasury entities use tax refund offset to collect a Treasury debt?

(a) *Tax refund offset.* In most cases, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by the offset of tax refunds and other Federal payments. *See* § 5.9(c) of this part. If not already transferred to the Financial Management Service under § 5.9 of this part, Treasury entities will refer to the Treasury Offset Program any past-due, legally enforceable debt for collection by tax refund offset. *See* 26 U.S.C. 6402(d), 31 U.S.C. 3720A and 31 CFR 285.2.

(b) *Notice.* At least sixty (60) days prior to referring a debt to the Treasury Offset Program, Treasury entities will send notice to the debtor in accordance with the requirements of § 5.4 of this part. Treasury entities will certify to the Financial Management Service's Treasury Offset Program, in writing, that the debt is past-due and legally enforceable in the amount submitted and that the Treasury entities have made reasonable efforts to obtain payment of the debt as described in 31 CFR 285.2(d). In addition, Treasury entities will certify their compliance with all applicable due process and other requirements described in this part and other Federal laws. *See* 31 U.S.C. 3720A(b) and 31 CFR 285.2.

(c) *Administrative review.* The notice described in § 5.4 of this part shall provide the debtor with at least 60 days prior to the initiation of tax refund offset to request an administrative review as described in § 5.10(c) of this part. Treasury entities may suspend collection through tax refund offset and/or other collection actions pending the resolution of the debtor's dispute.

§ 5.12 How will Treasury entities offset a Federal employee's salary to collect a Treasury debt?

(a) *Federal salary offset.* (1) Salary offset is used to collect debts owed to the United States by Treasury Department and other Federal employees. If a Federal employee owes a Treasury debt, Treasury entities may offset the employee's Federal salary to collect the debt in the manner described in this section. For information on how a Federal agency other than a Treasury entity may collect debt from the salary of a Treasury Department employee, see §§ 5.20 and 5.21, subpart C, of this part.

(2) Nothing in this part requires a Treasury entity to collect a Treasury debt in accordance with the provisions of this section if Federal law allows otherwise. *See, for example,* 5 U.S.C. 5705 (travel advances not used for allowable travel expenses are recoverable from the employee or his estate by setoff against accrued pay and other means) and 5 U.S.C. 4108 (recovery of training expenses).

(3) Treasury entities may use the administrative wage garnishment procedure described in § 5.13 of this part to collect a debt from an individual's non-Federal wages.

(b) *Centralized salary offset through the Treasury Offset Program.* As described in § 5.9(a) of this part, Treasury entities will refer Treasury debts to the Financial Management Service for collection by administrative offset, including salary offset, through the Treasury Offset Program. When possible, Treasury entities should attempt salary offset through the Treasury Offset Program before applying the procedures in paragraph (c) of this section. See 5 CFR 550.1109.

(c) *Non-centralized salary offset for Treasury debts.* When centralized salary offset through the Treasury Offset Program is not available or appropriate, Treasury entities may collect delinquent Treasury debts through non-centralized salary offset. *See* 5 CFR 550.1109. In these cases, Treasury entities may offset a payment internally or make a request directly to a Federal payment agency to offset a salary payment to collect a delinquent debt owed by a Federal employee. If the Federal payment agency is another Treasury entity, the Treasury entity making the request shall do so through the Deputy Chief Financial Officer as described in § 5.20(c) of this part. At least thirty (30) days prior to offsetting internally or requesting a Federal agency to offset a salary payment, Treasury entities will send notice to the debtor in accordance with the requirements of § 5.4 of this part. When referring a debt for offset, Treasury entities will certify to the payment agency, in writing, that the debt is valid, delinquent and legally enforceable in the amount stated, and there are no legal bars to collection by salary offset. In addition, Treasury entities will certify that all due process and other prerequisites to salary offset have been met. *See* 5 U.S.C. 5514, 31 U.S.C. 3716(a), and this section for a description of the due process and other prerequisites for salary offset.

(d) *When prior notice not required.* Treasury entities are not required to provide prior notice to an employee when the following adjustments are made by a Treasury entity to a Treasury employee's pay:

(1) Any adjustment to pay arising out of any employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(e) *Hearing procedures.* (1) *Request for a hearing.* A Federal employee who has received a notice that his or her Treasury debt will be collected by means of salary offset may request a hearing concerning the existence or amount of the debt. The Federal employee also may request a hearing concerning the amount proposed to be deducted from the employee's pay each pay period. The employee must send any request for hearing, in writing, to the office designated in the notice described in § 5.4. *See* § 5.4(a)(11). The request must be received by the designated office on or before the 15th calendar day following the employee's receipt of the notice. The employee must sign the request and specify whether an oral or paper hearing is requested. If an oral hearing is requested, the employee must explain why the matter cannot be resolved by review of the documentary evidence alone. All travel expenses incurred by the Federal employee in connection with an in-person hearing will be borne by the employee.

(2) *Failure to submit timely request for hearing.* If the employee fails to submit a request for hearing within the time period described in paragraph (e)(1) of this section, the employee will have waived the right to a hearing, and salary offset may be initiated. However, Treasury entities should accept a late request for hearing if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(3) *Hearing official.* Treasury entities must obtain the services of a hearing official who is not under the supervision or control of the Secretary. Treasury entities may contact the Deputy Chief Financial Officer as described in § 5.20(c) of this part or an agent of any agency designated in Appendix A to 5 CFR part 581 (List of Agents Designated to Accept Legal Process) to request a hearing official.

(4) *Notice of hearing.* After the employee requests a hearing, the designated hearing official shall inform the employee of the form of the hearing to be provided. For oral hearings, the notice shall set forth the date, time and location of the hearing. For paper hearings, the notice shall notify the employee of the date by which he or she should submit written arguments to the designated hearing official. The hearing official shall give the employee reasonable time to submit documentation in support of the employee's position. The hearing official shall schedule a new hearing date if requested by both parties. The hearing official shall give both parties reasonable notice of the time and place of a rescheduled hearing.

(5) *Oral hearing.* The hearing official will conduct an oral hearing if he or she determines that the matter cannot be resolved by review of documentary evidence alone (for example, when an issue of credibility or veracity is involved). The hearing need not take the form of an evidentiary hearing, but may be conducted in a manner determined by the hearing official, including but not limited to:

(i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses and argument;

(ii) Informal meetings with an interview of the employee by the hearing official; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(6) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position.

(7) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for a paper hearing, the employee will have waived the right to a hearing, and salary offset may be initiated. Further, the employee will have been deemed to admit the existence and amount of the debt as described in the notice of intent to offset. If the Treasury entity representative fails to appear at an oral hearing, the hearing official shall proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

(8) *Burden of proof.* Treasury entities will have the initial burden to prove the existence and amount of the debt. Thereafter, if the employee disputes the existence or amount of the debt, the employee must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the employee may present evidence that the proposed terms of the repayment schedule are unlawful, would cause a financial hardship to the employee, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The hearing official shall maintain a summary record of any hearing provided by this part. Witnesses will testify under oath or affirmation in oral hearings.

(10) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 days after the date on which the request for hearing was received by the Treasury entity. If the employee requests a delay in the proceedings, the deadline for the decision may be postponed by the number of days by which the hearing was postponed. When a decision is not timely rendered, the Treasury entity shall waive penalties applied to the debt for the period beginning with the date the decision is due and ending on the date the decision is issued.

(11) *Content of decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision shall be final.

(f) Waiver not precluded. Nothing in this part precludes an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory authority.

(g) *Salary offset process.* (1) *Determination of disposable pay.* The office of the Deputy Chief Financial Officer will consult with the appropriate Treasury entity payroll office to determine the amount of a Treasury Department employee's disposable pay (as defined in § 5.1 of this part) and will implement salary offset when requested to do so by a Treasury entity, as described in paragraph (c) of this section, or another agency, as described in § 5.20 of this part. If the debtor is not employed by the Treasury Department, the agency employing the debtor will determine the amount of the employee's disposable pay and will implement salary offset upon request.

(2) *When salary offset begins.* Deductions shall begin within three official pay periods following receipt of the creditor agency's request for offset.

(3) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, as follows:

(i) If the amount of the debt is equal to or less than 15 percent of the disposable pay, such debt generally will be collected in one lump sum payment;

(ii) Installment deductions will be made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount or the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(4) *Final salary payment.* After the employee has separated either voluntarily or involuntarily from the payment agency, the payment agency may make a lump sum deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy a debt.

(h) *Payment agency's responsibilities.* (1) As required by 5 CFR 550.1109, if the employee separates from the payment agency from which a Treasury entity has requested salary offset, the payment agency must certify the total amount of its collection and notify the Treasury entity and the employee of the amounts collected. If the payment agency is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar payments, it must provide written notification to the payment agency responsible for making such payments that the debtor owes a debt, the amount of the debt, and that the Treasury entity has complied with the provisions of this section. Treasury entities must submit a properly certified claim to the new payment agency before the collection can be made.

(2) If the employee is already separated from employment and all payments due from his or her former payment agency have been made, Treasury entities may request that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar funds, be administratively offset to collect the debt. Generally, Treasury entities will collect such monies through the Treasury Offset Program as described in § 5.9(c) of this part.

(3) When an employee transfers to another agency, Treasury entities should resume collection with the employee's new payment agency in order to continue salary offset.

§ 5.13 How will Treasury entities use administrative wage garnishment to collect a Treasury debt from a debtor's wages?

(a) Treasury entities are authorized to collect debts from a debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. This part adopts and incorporates all of the provisions of 31 CFR 285.11 concerning administrative wage garnishment, including the hearing procedures described in 31 CFR 285.11(f). Treasury entities may use administrative wage garnishment to collect a delinquent Treasury debt unless the debtor is making timely payments under an agreement to pay the debt in installments (see § 5.6 of this part). At least thirty (30) days prior to initiating an administrative wage garnishment, Treasury entities will send notice to the debtor in accordance with the requirements of § 5.4 of this part,

including the requirements of § 5.4(a)(10) of this part. For Treasury debts referred to the Financial Management Service under § 5.9 of this part, Treasury entities may authorize the Financial Management Service to send a notice informing the debtor that administrative wage garnishment will be initiated and how the debtor may request a hearing as described in § 5.4(a)(10) of this part. If a debtor makes a timely request for a hearing, administrative wage garnishment will not begin until a hearing is held and a decision is sent to the debtor. See 31 CFR 285.11(f)(4). If a debtor's hearing request is not timely, Treasury entities may suspend collection by administrative wage garnishment in accordance with the provisions of 31 CFR 285.11(f)(5). All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(b) This section does not apply to Federal salary offset, the process by which Treasury entities collect debts from the salaries of Federal employees (see § 5.12 of this part).

§ 5.14 How will Treasury entities report Treasury debts to credit bureaus?

Treasury entities shall report delinquent Treasury debts to credit bureaus in accordance with the provisions of 31 U.S.C. 3711(e), 31 CFR 901.4, and the Office of Management and Budget Circular A–129, ''Policies for Federal Credit Programs and Nontax Receivables.'' For additional information, see Financial Management Service's ''Guide to the Federal Credit Bureau Program,'' which may be found at http://www.fms.treas.gov/debt. At least sixty (60) days prior to reporting a delinquent debt to a consumer reporting agency, Treasury entities will send notice to the debtor in accordance with the requirements of § 5.4 of this part. Treasury entities may authorize the Financial Management Service to report to credit bureaus those delinquent Treasury debts that have been transferred to the Financial Management Service under § 5.9 of this part.

§ 5.15 How will Treasury entities refer Treasury debts to private collection agencies?

Treasury entities will transfer delinquent Treasury debts to the Financial Management Service to obtain debt collection services provided by private collection agencies. See § 5.9 of this part.

§ 5.16 When will Treasury entities refer Treasury debts to the Department of Justice?

(a) *Compromise or suspension or termination of collection activity.* Treasury entities shall refer Treasury debts having a principal balance over $100,000, or such higher amount as authorized by the Attorney General, to the Department of Justice for approval of any compromise of a debt or suspension or termination of collection activity. *See* §§ 5.7 and 5.8 of this part; 31 CFR 902.1; 31 CFR 903.1.

(b) *Litigation.* Treasury entities shall promptly refer to the Department of Justice for litigation delinquent Treasury debts on which aggressive collection activity has been taken in accordance with this part and that should not be compromised, and on which collection activity should not be suspended or terminated. See 31 CFR part 904. Treasury entities may authorize the Financial Management Service to refer to the Department of Justice for litigation those delinquent Treasury debts that have been transferred to the Financial Management Service under § 5.9 of this part.

§ 5.17 Will a debtor who owes a Treasury debt be ineligible for Federal loan assistance or Federal licenses, permits or privileges?

(a) *Delinquent debtors barred from obtaining Federal loans or loan insurance or guaranties.* As required by 31 U.S.C. 3720B and 31 CFR 901.6, Treasury entities will not extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a debt owed to a Federal agency. This prohibition does not apply to disaster loans. Treasury entities may extend credit after the delinquency has been resolved. See 31 CFR 285.13 for standards defining when a ''delinquency'' is ''resolved'' for purposes of this prohibition.

(b) *Suspension or revocation of eligibility for licenses, permits, or privileges.* Unless prohibited by law, Treasury entities should suspend or revoke licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay a debt. The Treasury entity responsible for distributing the licenses, permits, or other privileges will establish policies and procedures governing suspension and revocation for delinquent debtors. If applicable, Treasury entities will advise the debtor in the notice required by § 5.4 of this part of the Treasury entities' ability to suspend or revoke licenses, permits or privileges. *See* § 5.4(a)(16) of this part.

§ 5.18 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death, or disability?

(a) *Material change in circumstances.* A debtor who owes a Treasury debt may, at any time, request a special review by the applicable Treasury entity of the amount of any offset, administrative wage garnishment, or voluntary payment, based on materially changed circumstances beyond the control of the debtor such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) *Inability to pay.* For purposes of this section, in determining whether an involuntary or voluntary payment would prevent the debtor from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the debtor shall submit a detailed statement and supporting documents for the debtor, his or her spouse, and dependents, indicating:

(1) Income from all sources;
(2) Assets;
(3) Liabilities;
(4) Number of dependents;
(5) Expenses for food, housing, clothing, and transportation;
(6) Medical expenses; and
(7) Exceptional expenses, if any.

(c) *Alternative payment arrangement.* If the debtor requests a special review under this section, the debtor shall submit an alternative proposed payment schedule and a statement to the Treasury entity collecting the debt, with supporting documents, showing why the current offset, garnishment or repayment schedule imposes an extreme financial hardship on the debtor. The Treasury entity will evaluate the statement and documentation and determine whether the current offset, garnishment, or repayment schedule imposes extreme financial hardship on the debtor. The Treasury entity shall notify the debtor in writing of such determination, including, if appropriate, a revised offset, garnishment, or payment schedule. If the special review results in a revised offset, garnishment, or repayment schedule, the Treasury entity will notify the appropriate agency or other persons about the new terms.

§ 5.19 Will Treasury entities issue a refund if money is erroneously collected on a debt?

Treasury entities shall promptly refund to a debtor any amount collected on a Treasury debt when the debt is waived or otherwise found not to be owed to the United States, or as otherwise required by law. Refunds under this part shall not bear interest unless required by law.

Subpart C—Procedures for Offset of Treasury Department Payments To Collect Debts Owed to Other Federal Agencies

§ 5.20 How do other Federal agencies use the offset process to collect debts from payments issued by a Treasury entity?

(a) *Offset of Treasury entity payments to collect debts owed to other Federal agencies.* (1) In most cases, Federal agencies submit eligible debts to the Treasury Offset Program to collect delinquent debts from payments issued by Treasury entities and other Federal agencies, a process known as ''centralized offset.'' When centralized offset is not available or appropriate, any Federal agency may ask a Treasury entity (when acting as a ''payment agency'') to collect a debt owed to such agency by offsetting funds payable to a debtor by the Treasury entity, including salary payments issued to Treasury entity employees. This section and § 5.21 of this subpart C apply when a Federal agency asks a Treasury entity to offset a payment issued by the Treasury entity to a person who owes a debt to the United States.

(2) This subpart C does not apply to Treasury debts. *See* §§ 5.10 through 5.12 of this part for offset procedures applicable to Treasury debts.

(3) This subpart C does not apply to the collection of non-Treasury debts through tax refund offset. *See* 31 CFR 285.2 for tax refund offset procedures.

(b) *Administrative offset (including salary offset); certification.* A Treasury entity will initiate a requested offset only upon receipt of written certification from the creditor agency that the debtor owes the past-due, legally enforceable debt in the amount stated, and that the creditor agency has fully complied with all applicable due process and other requirements contained in 31 U.S.C. 3716, 5 U.S.C. 5514, and the creditor agency's regulations, as applicable. Offsets will continue until the debt is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(c) *Where a creditor agency makes requests for offset.* Requests for offset under this section shall be sent to the U.S. Department of the Treasury, ATTN: Deputy Chief Financial Officer, 1500 Pennsylvania Avenue, NW., Attention: Metropolitan Square, Room 6228, Washington, DC 20220. The Deputy Chief Financial Officer will forward the request to the appropriate Treasury entity for processing in accordance with this subpart C.

(d) *Incomplete certification.* A Treasury entity will return an incomplete debt certification to the creditor agency with notice that the creditor agency must comply with paragraph (b) of this section before action will be taken to collect a debt from a payment issued by a Treasury entity.

(e) *Review.* A Treasury entity is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(f) *When Treasury entities will not comply with offset request.* A Treasury entity will comply with the offset request of another agency unless the Treasury entity determines that the offset would not be in the best interests of the United States, or would otherwise be contrary to law.

(g) *Multiple debts.* When two or more creditor agencies are seeking offsets from payments made to the same person, or when two or more debts are owed to a single creditor agency, the Treasury entity that has been asked to offset the payments may determine the order in which the debts will be collected or whether one or more debts should be collected by offset simultaneously.

(h) *Priority of debts owed to Treasury entity.* For purposes of this section, debts owed to a Treasury entity generally take precedence over debts owed to other agencies. The Treasury entity that has been asked to offset the payments may determine whether to pay debts owed to other agencies before paying a debt owed to a Treasury entity. The Treasury entity that has been asked to offset the payments will determine the order in which the debts will be collected based on the best interests of the United States.

§ 5.21 What does a Treasury entity do upon receipt of a request to offset the salary of a Treasury entity employee to collect a debt owed by the employee to another Federal agency?

(a) *Notice to the Treasury employee.* When a Treasury entity receives proper certification of a debt owed by one of its employees, the Treasury entity will begin deductions from the employee's pay at the next officially established pay interval. The Treasury entity will send a written notice to the employee indicating that a certified debt claim has been received from the creditor agency, the amount of the debt claimed to be owed by the creditor agency, the date deductions from salary will begin, and the amount of such deductions.

(b) *Amount of deductions from Treasury employee's salary.* The amount deducted under § 5.20(b) of this part will be the lesser of the amount of the debt certified by the creditor agency or an amount up to 15% of the debtor's disposable pay. Deductions shall continue until the Treasury entity knows that the debt is paid in full or until otherwise instructed by the creditor agency. Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency. *See* § 5.12(g) (salary offset process).

(c) *When the debtor is no longer employed by the Treasury entity.* (1) *Offset of final and subsequent payments.* If a Treasury entity employee retires or resigns or if his or her employment ends before collection of the debt is complete, the Treasury entity will continue to offset, under 31 U.S.C. 3716, up to 100% of an employee's subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor's final salary payment, lump-sum leave payment, and other payments payable to the debtor by the Treasury entity. *See* 31 U.S.C. 3716 and 5 CFR 550.1104(l) and 550.1104(m).

(2) *Notice to the creditor agency.* If the employee is separated from the Treasury entity before the debt is paid in full, the Treasury entity will certify to the creditor agency the total amount of its collection. If the Treasury entity is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, the Treasury entity will provide written notice to the agency making such payments that the debtor owes a debt (including the amount) and that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in § 5.9(c) of this part.

(3) *Notice to the debtor.* The Treasury entity will provide to the debtor a copy of any notices sent to the creditor agency under paragraph (c)(2) of this section.

(d) *When the debtor transfers to another Federal agency.* (1) *Notice to the creditor agency.* If the debtor transfers to another Federal agency before the debt is paid in full, the Treasury entity will notify the creditor agency and will certify the total amount of its collection on the debt. The Treasury entity will provide a copy of the certification to the creditor agency. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

(2) *Notice to the debtor.* The Treasury entity will provide to the debtor a copy of any notices and certifications sent to the creditor agency under paragraph (d)(1) of this section.

(e) *Request for hearing official.* A Treasury entity will provide a hearing official upon the creditor agency's request with respect to a Treasury entity employee. *See* 5 CFR 550.1107(a).

Appendix A to Part 5—Treasury Directive 34–01—Waiving Claims Against Treasury Employees for Erroneous Payments

Treasury Directive 34–01

Date: July 12, 2000.

Sunset Review: July 12, 2004.

Subject: Waiving Claims Against Treasury Employees for Erroneous Payments.

1. Purpose

This Directive establishes the Department of the Treasury's policies and procedures for waiving claims by the Government against an employee for erroneous payments of: (1) Pay and allowances (*e.g.*, health and life insurance) and (2) travel, transportation, and relocation expenses and allowances.

2. Background

a. 5 U.S.C. § 5584 authorizes the waiver of claims by the United States in whole or in part against an employee arising out of erroneous payments of pay and allowances, travel, transportation, and relocation expenses and allowances. A waiver may be considered when collection of the claim would be against equity and good conscience and not in the best interest of the United States provided that there does not exist, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim.

b. The General Accounting Office Act of 1996 (Pub. L. 104–316), Title I, § 103(d), enacted October 19, 1996, amended 5 U.S.C. § 5584 by transferring the authority to waive claims for erroneous payments exceeding $1,500 from the Comptroller General of the United States to the Office of Management and Budget (OMB). OMB subsequently redelegated this waiver authority to the executive agency that made the erroneous payment. The authority to waive claims not exceeding $1,500, which was vested in the head of each agency prior to the enactment of Pub. L. 104–316, was unaffected by the Act.

c. 5 U.S.C. § 5514 authorizes the head of each agency, upon a determination that an employee is indebted to the United States for debts to which the United States is entitled to be repaid at the time of the determination, to deduct up to 15%, or a greater amount if agreed to by the employee, from the employee's pay at officially established pay intervals in order to repay the debt.

3. Delegation

a. The Deputy Assistant Secretary (Administration), the heads of bureaus, the Inspector General, and the Inspector General for Tax Administration are delegated the authority to waive, in whole or in part, a claim of the United States against an employee for an erroneous payment of pay and allowances, travel, transportation, and relocation expenses and allowances, aggregating less than $5,000 per claim, in accordance with the limitations and standards in 5 U.S.C. § 5584.

b. Treasury's Deputy Chief Financial Officer is delegated the authority to waive, in whole or in part, a claim of the United States against an employee for an erroneous payment of pay and allowances, travel, transportation, and relocation expenses and allowances, aggregating $5,000 or more per claim, in accordance with the limitations and standards in 5 U.S.C. § 5584.

4. Appeals

a. Requests for waiver of claims aggregating less than $5,000 per claim which are denied in whole or in part may be appealed to the Deputy Chief Financial Officer for the Department of the Treasury.

b. Requests for waiver of claims aggregating $5,000 or more per claim which are denied in whole or in part may be appealed to the Assistant Secretary (Management)/Chief Financial Officer.

5. Redelegation

The Deputy Assistant Secretary (Administration), the heads of bureaus, the Inspector General, and the Inspector General for Tax Administration may redelegate their respective authority and responsibility in writing no lower than the bureau deputy chief financial officer unless authorized by Treasury's Deputy Chief Financial Officer. Copies of each redelegation shall be submitted to the Department's Deputy Chief Financial Officer.

6. Responsibilities

a. The Deputy Assistant Secretary (Administration), the heads of bureaus, the Inspector General, and the Inspector General for Tax Administration shall:

(1) Promptly notify an employee upon discovery of an erroneous payment to that employee;

(2) Promptly act to collect the erroneous overpayment, following established debt collection policies and procedures;

(3) Establish time frames for employees to request a waiver in writing and for the bureau to review the waiver request. These time frames must take into consideration the responsibilities of the United States to take prompt action to pursue enforced collection on overdue debts, which may arise from erroneous payments.

(4) Notify employees whose requests for waiver of claims aggregating less than $5,000 per claim are denied in whole or in part of the basis for the denial and the right to appeal the denial to the Deputy Chief Financial Officer of the Department of the Treasury. All such appeals shall:

(a) Be made in writing;

(b) Specify the basis for the appeal;

(c) Include a chronology of the events surrounding the erroneous payments;

(d) Include a statement regarding any mitigating factors; and

(e) Be submitted to the official who denied the waiver request no later than 60 days from receipt by the employee of written notice of the denial of the waiver; and

(f) Attach at least the following documents: the employee's original request for a waiver; the bureau's denial of the request; any personnel actions, *e.g.*, promotions, demotions, step increases, etc. that relate to the overpayment.

(5) Forward to Treasury's Deputy Chief Financial Officer the appeal and supporting documentation, the bureau's recommendation as to why the appeal should be approved or denied; and a statement as to the action taken by the bureau to avoid a recurrence of the error.

(6) Pay a refund when appropriate if a waiver is granted;

(7) Fulfill all labor relations responsibilities when implementing this directive; and

(8) Fulfill any other responsibility of the agency imposed by 5 U.S.C. § 5584, or other applicable laws and regulations.

b. Treasury's Deputy Chief Financial Officer shall advise employees whose requests for waiver of claims aggregating $5,000 or more per claim are denied in whole or in part of the basis for the denial and the right to appeal the denial to the Assistant Secretary (Management)/Chief Financial Officer. All such appeals shall be in the format and contain the information and documentation described in subsection 6.a.(4), above. The Deputy Chief Financial Officer shall forward to Assistant Secretary (Management)/Chief Financial Officer the appeal and supporting documentation, his/her recommendation as to why the appeal should be approved or denied, and a statement obtained from the bureau from which the claim arose as to the action taken by the bureau to avoid a recurrence of the error.

7. Reporting Requirements

a. Each bureau, the Deputy Assistant Secretary (Administration) for Departmental Offices, the Inspector General, and the Inspector General for Tax Administration shall maintain a register of waiver actions subject to Departmental review. The register shall cover each fiscal year and be prepared by December 31 of each year for the preceding fiscal year. The register shall contain the following information:

(1) The total amount waived by the bureau;

(2) The number and dollar amount of waiver applications granted in full;

(3) The number and dollar amount of waiver applications granted in part and denied in part, and the dollar amount of each;

(4) The number and dollar amount of waiver applications denied in their entirety;

(5) The number of waiver applications referred to the Deputy Chief Financial Officer for initial action or for appeal;

(6) The dollar amount refunded as a result of waiver action by the bureau; and

(7) The dollar amount refunded as a result of waiver action by the Deputy Chief Financial Officer or the Assistant Secretary (Management)/Chief Financial Officer.

b. Each bureau, the Deputy Assistant Secretary (Administration) for Departmental

Offices, the Inspector General, and the Inspector General for Tax Administration shall retain a written record of each waiver action for 6 years and 3 months. At a minimum, the written record shall contain:

(1) The bureau's summary of the events surrounding the erroneous payment;

(2) Any written comments submitted by the employee from whom collection is sought;

(3) An account of the waiver action taken and the reasons for such action; and

(4) Other pertinent information such as any action taken to refund amounts repaid.

8. Effect of Request for Waiver

A request for a waiver of a claim shall not affect an employee's opportunity under 5 U.S.C. § 5514(a)(2)(D) for a hearing on the determination of the agency concerning the existence or the amount of the debt, or the terms of the repayment schedule. A request by an employee for a hearing under 5 U.S.C. § 5514(a)(2)(D) shall not affect an employee's right to request a waiver of the claim. The determination whether to waive a claim may be made at the discretion of the deciding official either before or after a final decision is rendered pursuant to 5 U.S.C. § 5514(a)(2)(D) concerning the existence or the amount of the debt, or the terms of the repayment schedule.

9. Guidelines for Determining Requests

a. A request for a waiver shall *not* be granted if the deciding official determines there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. There are no exceptions to this rule for financial hardship or otherwise.

(1) ''Fault'' exists if, in light of all the circumstances, it is determined that the employee knew or should have known that an error existed, but failed to take action to have it corrected. Fault can derive from an act or a failure to act. Unlike fraud, fault does not require a deliberate intent to deceive. Whether an employee should have known about an error in pay is determined from the perspective of a reasonable person. Pertinent considerations in finding fault include whether:

(a) The payment resulted from the employee's incorrect, but not fraudulent, statement that the employee should have known was incorrect;

(b) The payment resulted from the employee's failure to disclose material facts in the employee's possession which the employee should have known to be material; or

(c) The employee accepted a payment, which the employee knew or should have known to be erroneous.

(2) Every case must be examined in light of its particular facts. For example, where an employee is promoted to a higher grade but the step level for the employee's new grade is miscalculated, it may be appropriate to conclude that there is no fault on the employee's part because employees are not typically expected to be aware of and understand the rules regarding determination of step level upon promotion. On the other hand, a different conclusion as to fault potentially may be reached if the employee in question is a personnel specialist or an attorney who concentrates on personnel law.

b. If the deciding official finds an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, then the request for a waiver must be denied.

c. If the deciding official finds no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, the employee is *not* automatically entitled to a waiver. Before a waiver can be granted, the deciding official must also determine that collection of the claim against an employee would be against equity and good conscience and not in the best interests of the United States. Factors to consider when determining if collection of a claim against an employee would be against equity and good conscience and not in the best interests of the United States include, but are not limited to:

(1) Whether collection of the claim would cause serious financial hardship to the employee from whom collection is sought.

(2) Whether, because of the erroneous payment, the employee either has relinquished a valuable right or changed positions for the worse, regardless of the employee's financial circumstances.

(a) To establish that a valuable right has been relinquished, it must be shown that the right was, in fact, valuable; that it cannot be regained; and that the action was based chiefly or solely on reliance on the overpayment.

(b) To establish that the employee's position has changed for the worse, it must be shown that the decision would not have been made but for the overpayment, and that the decision resulted in a loss.

(c) An example of a ''detrimental reliance'' would be a decision to sign a lease for a more expensive apartment based chiefly or solely upon reliance on an erroneous calculation of salary, and the funds spent for rent cannot be recovered.

(3) The cost of collecting the claim equals or exceeds the amount of the claim;

(4) The time elapsed between the erroneous payment and discovery of the error and notification of the employee;

(5) Whether failure to make restitution would result in unfair gain to the employee;

(6) Whether recovery of the claim would be unconscionable under the circumstances.

d. The burden is on the employee to demonstrate that collection of the claim would be against equity and good conscience and not in the best interest of the United States.

10. Authorities

a. 5 U.S.C. § 5584, ''Claims for Overpayment of Pay and Allowances, and of Travel, Transportation and Relocation Expenses and Allowances.''

b. 31 U.S.C. § 3711, ''Collection and Compromise.''

c. 31 U.S.C. § 3716, ''Administrative Offset.''

d. 31 U.S.C. § 3717, ''Interest and Penalty on Claims.''

e. 5 CFR Part 550, subpart K, ''Collection by Offset from Indebted Government Employees.''

f. 31 CFR Part 5, subpart B, ''Salary Offset.''

g. Determination with Respect to Transfer of Functions Pursuant to Public Law 104–316, OMB, December 17, 1996.

11. Cancellation

TD 34–01, ''Waiver of Claims for Erroneous Payments,'' dated October 25, 1995, is superseded.

12. Office of Primary Interest

Office of Accounting and Internal Control.

Dated: September 26, 2002.

Lisa Ross,

Acting Assistant Secretary for Management and Chief Financial Officer.

Edward R. Kingman, Jr.,

Assistant Secretary for Management and Chief Financial Officer, Department of the Treasury.

[FR Doc. 02–27006 Filed 10–25–02; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

31 CFR Part 5

RIN 1505–AA90

Treasury Debt Collection

AGENCY: Department of the Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to interim regulations.

SUMMARY: This proposed rule proposes to revise Treasury's debt collection regulations. Elsewhere in this issue of the **Federal Register**, the Department of the Treasury is issuing an interim rule revising the Department of the Treasury's debt collection regulations to conform with the Debt Collection Improvement Act of 1996, the revised Federal Claims Collection Standards, and other laws applicable to the collection of nontax debts owed to Treasury. The interim rule revises Treasury's regulations governing the offset of Treasury-issued payments to collect debts owed to other Federal agencies. The interim rule also serves as the text of this notice of proposed rulemaking.

DATES: Comments must be received on or before November 27, 2002.

ADDRESSES: Send comments to Cathy Thomas, Office of the Deputy Chief Financial Officer, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Attention: Metropolitan Square, Room 6228, Washington, DC 20220. Comments also may be submitted by electronic mail to*cathy.thomas@do.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Cathy Thomas, Office of the Deputy Chief Financial Officer, at (202) 622–0817, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. This document is available for downloading from the Department of the Treasury's Financial Management Service web site at the following address:*http://www.fms.treas.gov.*

SUPPLEMENTARY INFORMATION: The interim rule in this issue of the **Federal Register** revises 31 CFR part 5. For the text of the interim rule, see Treasury Debt Collection, published elsewhere in this issue of the **Federal Register**.

Regulatory Analyses

This proposed rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule will only affect persons who owe delinquent nontax debts to the Treasury Department and other Federal agencies. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 31 CFR Part 5

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Government employee, Hearing and appeal procedures, Pay administration, Salaries, Wages.

Dated: September 26, 2002.

Edward R. Kingman, Jr.,

Assistant Secretary for Management and Chief Financial Officer, Department of the Treasury.

[FR Doc. 02–27007 Filed 10–25–02; 8:45 am]

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Federal Register

Monday,
October 28, 2002

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Picture Identification Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA–2002–11666; Amendment No. 61–107]

RIN 2120–AH76

Picture Identification Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This rule revises the pilot certificate requirements to require a person to carry a photo identification acceptable to the Administrator when exercising the privileges of a pilot certificate. Additionally, this final rule requires a pilot certificate holder to present a photo identification when requested by the Administrator, an authorized representative of the National Transportation Safety Board (NTSB) or Transportation Security Administration (TSA), or a law enforcement officer. These measures address security concerns regarding the identification of pilots.

DATES: This final rule is effective October 28, 2002. You may send your comments to reach us on or before November 27, 2002.

ADDRESSES: Mail or hand deliver your comments to Docket Management System, Attention: Docket No. FAA–2002–11666, U.S. Department of Transportation, 400 Seventh Street, SW (Nassif Building), Room 401, Plaza Level, Washington, DC 20590–0001. Send electronic comments to: *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: John D. Lynch, Certification Branch, AFS–840, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone No. (202) 267–3844.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, federalism, or security impacts that might result from this rule. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

All comments received will be filed in the docket. The FAA will develop a report that summarizes each substantive public contact with the FAA personnel concerning this rulemaking. 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. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

We will consider all comments we receive on or before the closing date for comments. We may change this rule based on the comments we receive.

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

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last five digits of the Docket number of this notice (10910). Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If your organization is a small entity and you have a question, contact your local FAA official. If you don't know how to contact your local FAA official, you may contact the Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (888) 551–1594. Internet users can find additional information on SBREFA on the FAA's web page at www.faa.gov and may send electronic inquiries to the following internet address: 9-AWA-SBREFA@faa.gov.

Background

The Aviation and Transportation Security Act (ATSA), Public Law 107–71, enacted on November 19, 2001, requires the Under Secretary of Transportation for Security (''Under Secretary'') to consider a requirement for a photo identification pilot certificate. In relevant part, § 109(a) of ASTA provides that the Under Secretary in consultation with the Administrator of the Federal Aviation Administration, may ''consider whether to require all pilot licenses to incorporate a photograph of the license holder and appropriate bio-metric imprints.'' The Under Secretary is required to report annually to Congress on the progress in evaluating and taking such actions.

In addition, § 129 of ATSA amends 49 U.S.C. 44703(g), by adding the phrase ''combating acts of terrorism'' as an additional purpose for revising the FAA airman certification system. The FAA now must consider terrorism as a factor in addition to the needs of pilots and officials responsible for enforcing drug-related laws when making modifications to the airman certification system.

Congress first mandated modification of the airman certification system in the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 (DEA Act) (Subtitle E of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690)) with the objective of assuring positive and verifiable identification of each person applying for or holding a pilot certificate. The DEA Act was intended to assist Federal, State, and local agencies involved in the enforcement of the nation's drug laws. In response to the DEA Act, the FAA issued a Notice of Proposed Rulemaking on March 12, 1990 (55 FR 9270). The proposed rule would have required a two part pilot certificate; part A was an Airman Identity Card and part B would include all ratings and limitations. This new certificate would be issued to private,

commercial, and airline transport pilots. As proposed, the Airman Identity Card portion of the pilot certificate would be non-forgeable and contain a photograph of the pilot, his or her signature, address, and identification number. In addition, the certificates would be machine-readable by equipment in use by the United States Customs Service, and have a variety of other security features. The FAA's proposed rule to modify the airman certification system has not been issued as a final rule by the FAA.

Petition From the Aircraft Owners and Pilots Association

By letter, dated February 21, 2002, Mr. Philip Boyer, President, Aircraft Owners and Pilots Association (AOPA), 421 Aviation Way, Frederick, MD 21701, petitioned the FAA to revise 14 CFR 61.3(a) and (l) to require a pilot to carry, and present for appropriate inspection, a form of photo identification acceptable to the Administrator of the Federal Aviation Administration. Specifically, the AOPA requested that 14 CFR 61.3(a) be amended to provide that a person may not act as a pilot of a civil aircraft of U.S. registry unless that person has a form of photo identification acceptable to the Administrator in that person's physical possession or readily accessible in the aircraft while exercising the privileges of a pilot certificate or special purpose pilot authorization. The AOPA also suggested 14 CFR 61.3(l) be amended to provide that each person required to have a form of photo identification by 14 CFR 61.3(a) be required to present it for inspection upon request from the Administrator or any Federal, State, or local law enforcement officer.

In its petition, the AOPA expressed the view that the intent of the DEA Act and ATSA provisions on pilot identification would be met by its recommended rule changes, and that its approach would be far less costly and quicker to implement than would any significant modification to the airman certification system. The AOPA notes that all fifty States and the District of Columbia issue a photo identification driver's license, and that currently candidates for a pilot certificate examination are required to present photo identification. Thus, the requirement to present a photo identification acceptable to the Administrator could be met with a driver's license, at no cost to pilots or the government. Precisely because of the very minimal burden of the recommended changes, the AOPA believes that its recommendation should be implemented through a direct final rule, and suggests that the FAA find notice and comment to be impractical, unnecessary, or contrary to the public interest.

The FAA's Acceptance of the Petition

By letter dated March 27, 2002, the FAA responded to the AOPA petition by stating that the proposal ''provides a positive short-term measure to enhance security throughout the general aviation community.'' While the AOPA's recommendations are a good interim measure, neither the FAA nor the Transportation Security Administration has concluded that these measures address fully the concerns reflected in the DEA Act or ATSA. Although requiring a pilot to carry an acceptable photo identification will provide more security than not requiring an identification, the overlap of key information between the pilot certificate and the required photo identification will be limited and potentially inconsistent. For example, it is quite likely the addresses on the two documents will not match, because the address on a pilot certificate is not updated when a pilot moves. Moreover, an improved pilot certificate could include a variety of security enhancements in addition to simply having a photograph of the holder on the certificate.

This rule adopts the core of the AOPA's recommendations for pilot identification requirements. The FAA will continue to work in conjunction with the TSA to determine what further actions need to be taken to improve airman certification process. The FAA considers the AOPA's recommendations to be an expeditious and cost effective measure that will provide additional security through enhanced identification of pilots exercising the privileges of their certificate. Requiring pilots to carry photographic identification with a pilot certificate will be cost effective because most pilots already carry an identification acceptable to the Administrator, such as a driver's license, and the cost of obtaining a government issued photo identification is minimal. The TSA recognizes the ongoing security concerns regarding the use of an aircraft to conduct terrorist acts within the United States. Therefore, TSA has requested that the FAA issue a final rule, without prior notice and public comment, effective upon publication, adopting the AOPA petition to require that pilots properly identify themselves. The TSA believes this action is necessary to prevent further terrorist acts which may result in grave hazards to aircraft, persons, and property within the United States.

The Rule Change

The chart below is a brief summary of the regulatory changes contained in this final rule. The list is followed by a more detailed discussion of the rule.

Final rule No.	Part 61 Sec. No./Para. No.	Summary of the rule
1	§ 61.3(a)	Each person must carry a photo identification acceptable to the Administrator when exercising the privileges of a pilot certificate.
2	§ 61.3(l)	Each person must present such photo identification when requested to do so by the Administrator, an authorized representative of the NTSB or the TSA, or a law enforcement officer.

(1) 14 CFR 61.3(a) is amended to require each person to carry a photo identification when exercising the privileges of a pilot certificate.

The FAA revises 14 CFR 61.3(a) to require each person to carry a photo identification when exercising the privileges of a pilot certificate. The photo identification in most instances likely will be a driver's license issued by a State, the District of Columbia, or a territory or possession of the United States. It may also be a government identification card issued by the Federal government or a State, the District of Columbia, or a territory or possession of the United States, a military identification card, or a passport. Under this rule, a credential with a photo issued by an air carrier or airport operator that provides unescorted access to a security identification display area at an airport regulated under 49 CFR part 1542 is acceptable. The rule also permits other forms of photo identification that the Administrator finds acceptable.

(2) 14 CFR 61.3(l) is revised to require a person to present a photo identification when requested to do so

by the Administrator, an authorized representative from the NTSB or the TSA, or a law enforcement officer.

The FAA revises 14 CFR 61.3(l) so as to require a person to present a photo identification when requested to do so by the Administrator, an authorized representative of the NTSB or the TSA, or a law enforcement officer. A request from the Administrator for a person to present a photo identification includes a request from any FAA Aviation Safety Inspector or designated examiner. A request from an authorized representative of the NTSB for a person to present a photo identification includes a request from an Accident Investigator of the NTSB. A request from a law enforcement officer for a person to present a photo identification includes a request from any city, municipality, county, parish, borough, State, or Federal law enforcement officer.

Justification for Immediate Adoption

This action is being taken without providing the opportunity for prior notice and public comment. The TSA requests immediate adoption of this rule to require pilots to carry and present identification and the FAA finds this action is necessary to assist in preventing hazards to aircraft, persons, and property within the United States. The TSA, in consultation with the security agencies of the Executive Branch, monitors threats to aviation security on a constant basis. The TSA has issued other regulatory documents that became effective immediately in order to minimize security threats and potential security vulnerabilities to the fullest extent possible, and the FAA issues this rule without prior notice and public comment for the same reason. The FAA, TSA, and other federal security agencies have been concerned about the potential misuse of an aircraft to carry out terrorist acts in the United States since September 11, and the TSA and FAA now believe it is necessary to require pilots to carry and present picture identification to help minimize the threat of such acts.

The FAA finds that prior notice and public comment are impracticable and contrary to the public interest, pursuant to section 553 of the Administrative Procedure Act (APA). Section 553(b)(B) of the APA permits an agency to forego notice and comment rulemaking when ''the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary or contrary to the public interest.'' The use of notice and comment prior to issuance of this rule would delay the potential security benefit of this rulemaking and increase the public's exposure to the risk of another terrorist act unnecessarily. FAA asks for comment with publication of this rule, and will consider all comments received during the comment period. If changes to the rule are necessary to address aviation security more effectively, or in a less burdensome but equally effective manner, FAA will make such changes. The FAA finds that that the circumstances described herein warrant immediate action, and finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

Economic Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review, directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. This rule is considered significant under that Order. If we determine that the expected impact is so minimal that the regulation does not warrant a full evaluation, we include a statement to that effect and the basis for it in the preamble. The FAA has determined that the expected economic impact of this rule is so minimal that it does not warrant a full regulatory evaluation. This action imposes no costs on pilots subject to this rule because most persons already have some form of photo identification. It does, however, provide unquantifiable security benefits by helping establish the identity of pilots. The FAA also has determined that this rule is consistent with the objectives of Executive Order 12866.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final action imposes no costs on any small entities subject to this rule. Consequently, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities. The FAA solicits comments on this certification.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, aren't considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA accordingly has assessed the potential effect of this rule to be minimal and therefore has determined that this rule will not result in an impact on international trade.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act) requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The Act requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed ''significant intergovernmental mandate.'' Under the Act, a ''significant intergovernmental mandate'' is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this rule would not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. We determined that this rule, therefore, would not have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no requirements for information collection associated with this rule.

Environmental Analysis

FAA Order No. 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order No. 1050.1D, Appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those that may cause a significant impact on the human environment if implemented) qualify for a categorical exclusion. The FAA has determined that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its implementation.

Energy Impact

We assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 61

Aircraft, Airmen, Aviation safety, and Reporting and recordkeeping requirements.

The Amendment

For the reasons stated in the preamble, the Federal Aviation Administration amends part 61 of Title 14 of the Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Amend § 61.3 by revising paragraph (a) and the introductory text of paragraph (l) and by adding paragraph (l)(4) to read as follows:

§ 61.3 Requirement for certificates, ratings, and authorizations.

(a) *Pilot certificate.* A person may not act as pilot in command or in any other capacity as a required pilot flight crewmember of a civil aircraft of U.S. registry, unless that person—

(1) Has a valid pilot certificate or special purpose pilot authorization issued under this part in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization. However, when the aircraft is operated within a foreign country, a current pilot license issued by the country in which the aircraft is operated may be used; and

(2) Has a photo identification that is in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization. The photo identification must be a:

(i) Valid driver's license issued by a State, the District of Columbia, or territory or possession of the United States;

(ii) Government identification card issued by the Federal government, a State, the District of Columbia, or a territory or possession of the United States;

(iii) U.S. Armed Forces' identification card;

(iv) Official passport;

(v) Credential that authorizes unescorted access to a security identification display area at an airport regulated under 49 CFR part 1542; or

(vi) Other form of identification that the Administrator finds acceptable.

* * * * *

(l) Inspection of certificate. Each person who holds an airman certificate, medical certificate, authorization, or license required by this part must present it and their photo identification as described in paragraph (a)(2) of this section for inspection upon a request from:

* * * * *

(4) An authorized representative of the Transportation Security Administration.

Issued in Washington, DC, on October 23, 2002.

Marion C. Blakey,

Administrator.

[FR Doc. 02–27411 Filed 10–23–02; 4:10 pm]

BILLING CODE 4910–13–P

Federal Register

Monday,
October 28, 2002

Part V

Department of Housing and Urban Development

24 CFR Part 982

Housing Choice Voucher Program Homeownership Option: Eligibility of Units Owned or Controlled by a Public Housing Agency; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4759–I–01]

RIN 2577–AC39

Housing Choice Voucher Program Homeownership Option: Eligibility of Units Owned or Controlled by a Public Housing Agency

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule provides that units owned or substantially controlled by a public housing agency (PHA) are eligible for purchase under the Housing Choice Voucher Program homeownership option. The inclusion of PHA-owned or controlled properties among properties eligible for purchase under the homeownership option will expand the availability of housing and affordable homeownership opportunities for voucher families participating in the homeownership option. The interim rule also establishes procedures to remove potential conflicts of interest where the PHA is the seller. Specifically, the interim rule provides that an independent entity must perform certain administrative duties for which the PHA would normally be responsible. These provisions are modeled on the requirements for PHA-owned units in the voucher rental program.

DATES: *Effective Date:* November 27, 2002.

Comments Due Date: December 27, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to 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. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for inspection and copying between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–0477. (This is not a toll-free number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Under the ''homeownership option'' of the Housing Choice Voucher Program, a public housing agency (PHA) may choose to provide monthly tenant-based assistance to an eligible family that purchases a dwelling unit that will be occupied by the family. The regulatory requirements governing the homeownership option are located in subpart M of HUD's regulations for the Housing Choice Voucher Program at 24 CFR part 982. Subpart M describes program requirements for special housing types, where assistance is provided with voucher program funds under the consolidated annual contributions contract.

This interim rule provides that properties owned or substantially controlled by a PHA are eligible for purchase under the homeownership option. The current homeownership option regulations are unclear regarding the eligibility of PHA-owned units. This interim rule amends § 982.628 of the homeownership option regulations, which concerns the eligibility of units, to specify that a PHA may provide homeownership assistance for the purchase of a PHA-owned unit. The inclusion of PHA-owned units in the universe of eligible units will expand the availability of housing and affordable homeownership opportunities for voucher families participating in the homeownership option.

New § 982.628(c) provides that PHA-owned units are eligible for purchase through the homeownership option, but provides that an independent entity must perform certain administrative duties for which the PHA would normally be responsible. The independent entity must review the contract of sale, conduct the initial housing quality standards (HQS) inspection, and review the independent inspection report. In addition, the independent entity must determine the reasonableness of the sales price and any PHA provided financing.

The reviews performed by the independent entity shall be conducted in accordance with the homeownership option regulations. The independent entity must be selected by the PHA and approved by HUD in accordance with existing procedures under the tenant-based assistance program at § 982.352(b)(iv)(B) and (C). The PHA may not steer, direct, or require families to purchase PHA-owned properties.

Except for the purchase of PHA-owned units, the homeownership option regulations do not require the PHA to consider the reasonability of the sales price. In addition, although a PHA may establish requirements governing terms and types of financing, it is not required to do so (see § 982.632). Therefore, the requirement that the independent entity review the reasonableness of the sales price and any PHA provided financing for PHA-owned units goes beyond what is otherwise required, but HUD believes a third party review of these two areas is helpful to protect the purchasing family where the seller is also the administering PHA.

II. Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impractical, unnecessary, or contrary to the public interest'' (*see* 24 CFR 10.1). For the following reasons, HUD has determined that it would be contrary to the public interest to delay the effectiveness of this rule in order to solicit prior public comments.

The interim rule eliminates ambiguity in HUD's homeownership option regulations by clarifying that PHA-owned units are eligible for purchase with voucher homeownership assistance. Clarifying that PHA-owned units are eligible for purchase under the homeownership option will expand the availability of housing and affordable homeownership opportunities for voucher families participating in the program. Delaying the effectiveness of this rule to solicit prior public comment would perpetuate the current ambiguity of the regulations, and might prevent families from purchasing PHA-owned units.

Although the interim rule also establishes new requirements for such sales, these procedures are necessary to eliminate potential program abuses where the PHA is also the seller. Further, these procedures are closely modeled on the existing requirements for PHA-owned units under the rental voucher program. Accordingly, these requirements are familiar to PHAs and voucher families, and should not raise

any novel issues or impose undue administrative burdens on PHAs.

Although HUD believes that good cause exists to publish this rule for effect without prior public comment, HUD recognizes the value of public comment in the development of its regulations. HUD has, therefore, issued these regulations on an interim basis and has provided the public with a 60-day comment period. HUD welcomes comments on the regulatory amendments made by this interim rule. The public comments will be addressed in the final rule.

III. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding remains applicable to this interim rule and 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule is exclusively concerned with homeownership voucher assistance. This proposed 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.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (RFA), has reviewed and approved this interim rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not be Affected.* The interim rule is exclusively concerned with public housing agencies that administer tenant-based housing assistance under section 8 of the United States Housing Act of 1937. Under the definition of ''small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The interim rule does not change the amount of funding available under the Housing Choice Voucher Program. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Catalog of Domestic Assistance Number

The Catalog of Domestic Assistance Number for the Housing Choice Voucher Program is 14.871.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 982 as follows:

PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. Add § 982.628(c) to read as follows:

§ 982.628 Homeownership option: Eligible units.

* * * * *

(c) *PHA-owned units.* Homeownership assistance may be provided for the purchase of a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA), only if all of the following conditions are satisfied:

(1) The PHA must inform the family, both orally and in writing, that the family has the right to purchase any eligible unit and a PHA-owned unit is freely selected by the family without PHA pressure or steering;

(2) The unit is not ineligible housing;

(3) The PHA must obtain the services of an independent agency, in accordance with § 982.352(b)(1)(iv)(B) and (C), to perform the following PHA functions:

(i) Inspection of the unit for compliance with the HQS, in accordance with § 982.631(a);

(ii) Review of the independent inspection report, in accordance with § 982.631(b)(4);

(iii) Review of the contract of sale, in accordance with § 982.631(c); and

(iv) Determination of the reasonableness of the sales price and any PHA provided financing, in accordance with § 982.632 and other supplementary guidance established by HUD.

* * * * *

Dated: September 3, 2002.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–27310 Filed 10–25–02; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Monday,
October 28, 2002

Part VI

The President

Proclamation 7614—United Nations Day, 2002

Federal Register
Vol. 67, No. 208
Monday, October 28, 2002

Presidential Documents

Title 3—

The President

Proclamation 7614 of October 23, 2002

United Nations Day, 2002

By the President of the United States of America

A Proclamation

The United Nations was founded 57 years ago to improve our global community by strengthening the ties among member nations through improved communication, expanded understanding, and enhanced security. On United Nations Day, America joins the world in commemorating the founding of this important international organization and recognizing the profound impact it has had on our world and the role that it continues to play.

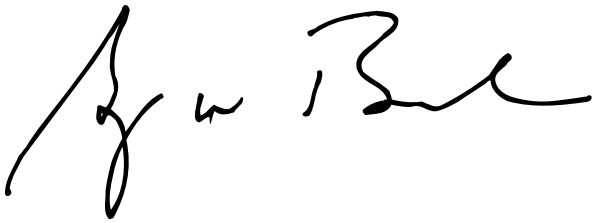
Since October 24, 1945, the United Nations Organization has grown to include 191 member states. Through its relief agencies, the U.N. aids and protects millions of refugees and displaced persons worldwide. For example, in 2001, the United Nations World Food Program provided aid to 77 million people in 82 countries and helped to avert a severe famine that threatened Afghanistan. The U.N. also seeks to improve living conditions around the globe by immunizing children, providing safe drinking water, and fighting disease.

The United States remains committed to helping the U.N. to advance human rights, healthcare, security, and education throughout the world; and we will continue to meet these and other commitments as we rejoin the United Nations Educational, Scientific, and Cultural Organization. Our country continues to work with the U.N. in supplying aid for nations and peoples in need or distress, and in providing medical care and other essentials through U.N. agencies such as UNICEF.

As our world faces new challenges and opportunities, the efforts of the United Nations take on a renewed significance. The United States recognizes the U.N. for its efforts to support and strengthen the international coalition against global terror. And we hope the United Nations will fulfill its role in addressing the threats posed to the civilized world, particularly the threat now posed by Iraq. As a founding member of the U.N., the United States reaffirms our dedication to this vital organization and our hope that it will continue to fulfill the vision of its founders.

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 24, 2002, as United Nations Day. I call upon the people of the United States to observe this day with appropriate programs and activities.

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



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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.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

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