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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.

FARM CREDIT ADMINISTRATION

12 CFR Part 622

RIN 3052–AC12

Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit Administration (FCA).

ACTION: Final rule.

SUMMARY: This regulation revises cost-of-living adjustments for all civil money penalties (CMPs) under the Farm Credit Administration's (FCA) jurisdiction. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (FCPIA Act) requires us to adjust our CMPs at least once every 4 years for inflation. Our last adjustments, effective in October 2000, incorporated a rounding method based on the amount of the penalty increase. We have recently been advised by the General Accounting Office (GAO) that the adjustment should have been based on the amount of the penalty. Therefore, we have recalculated the penalties and have revised the penalty amounts.

EFFECTIVE DATE: The regulation will become effective on November 15, 2002.

FOR FURTHER INFORMATION CONTACT:

Mark L. Johansen, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434,

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this regulation is to recalculate the CMP inflation adjustments consistent with the FCPIA Act.

II. Cost-of-Living Adjustment

The FCPIA Act,[1] as amended by the Debt Collection Improvement Act of 1996 (DCIA),[2] requires each agency to adjust each CMP within its jurisdiction by a prescribed cost-of-living adjustment at least once every 4 years. This cost-of-living adjustment is based on the formula described in section 5(b) of the FCPIA Act. We made our last adjustment in July 2000, effective in October of that year, when we increased the penalties from $1,100 to $1,170 per day for violation of an order that has become final, and from $550 to $580 per day for violation of the Farm Credit Act of 1971, as amended, or FCA regulations. *See* 65 FR 46087 (July 27, 2000) for a full explanation of the types of violations subject to CMPs.

Earlier this year, the GAO began a government-wide review of agencies' application of the FCPIA Act. The GAO found that several agencies, including the FCA, took actions that did not conform to the strict language of the FCPIA Act and requested that each agency adjust its penalties accordingly. In a letter to the FCA, the GAO stated that they ''recognize some advantages to rounding on the basis of the size of the increase rather than the size of the penalty,'' but requested FCA ''to adjust the agency's civil penalties in a manner consistent with the requirements of the [FCPIA Act].'' *See* GAO–02–1084R FCA Penalty Adjustments.

The FCPIA Act contains a formula for rounding CMP increases, setting out penalty ranges on amounts from less than or equal to $100, to amounts greater than $200,000, and provides different dollar multiples for rounding the increase in each penalty range. Section 5(a) of the FCPIA Act provides that increases determined under that subsection must be rounded to:

- The nearest ''multiple of $10 *in the case of penalties* less than or equal to $100'';
- The nearest ''multiple of $100 *in the case of penalties* greater than $100 but less than or equal to $1,000''; and
- The nearest ''multiple of $1,000 *in the case of penalties* greater than $1,000 but less than or equal to $10,000.''

Emphasis added. In our 2000 regulation, we applied the rounding method to the amount of the *increase* in the penalty, rather than to the amount of the penalty itself.

We based our 2000 CMP adjustments on the difference between the Consumer Price Index (CPI) for June of the preceding year of the adjustment (June 1999) and the CPI for June of the year the CMP was last set (June 1996).[3] For the 2000 adjustment, the CPI value was 156.7 for June 1996 and was 166.2 for June 1999, resulting in an inflation factor of 1.06 (*i.e.*, a 6-percent increase). The prerounding adjustments were a $66.69 increase for the $1,100 penalty and a $33.34 increase for the $550 penalty.

Using the FCPIA Act's correct rounding formula, the $66.69 increase should have been rounded to the nearest $1,000, which is zero, because the penalty in question is in the $1,000–9,999 category. That rounding results in no adjustment to the $1,100 penalty. The $33.34 increase should have been rounded to the nearest $100, which is also zero, because the penalty in question is in the $100–999 category. That rounding results in no adjustment to the $550 penalty.

We now amend § 622.61 to provide for CMPs of $1,100 and $550. We note that the agency has not imposed any CMPs in the last 2 years; consequently, no person has been required to pay the higher penalty amounts we adopted in 2000.

III. Notice and Comment Not Required by Administrative Procedure Act

The FCPIA Act gives Federal agencies no discretion in the adjustment of CMPs for the rate of inflation. Moreover, this regulation is ministerial, technical, and noncontroversial. For these reasons, the FCA finds good cause to determine that public notice and an opportunity to comment are impracticable, unnecessary, and contrary to the public interest pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), and adopts this rule in final form. In addition, because this rule will relieve a burden by reducing the CMPs to the

[1] 28 U.S.C. 2461 note.

[2] Pub. L. 104–134, sec. 31001(s), 110 Stat. 1321–373 (April 26, 1996).

[3] We used the Department of Labor, Bureau of Labor Statistics—All Urban Consumers tables, in which the period 1982–84 was equal to 100, to get the CPI numbers. We note that the 1996 adjustment was based on the June 1995 CPI. In calculating the new adjustments, the FCPIA Act requires us to use the 3-year period from June 1996 to June 1999.

correct amounts, the FCA has determined that it should become effective immediately.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 622

Administrative practice and procedures, Crime, Investigations, Penalties.

For the reasons stated in the preamble, part 622 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 622—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 622 continues to read as follows:

Authority: Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261–2273); 28 U.S.C. 2461 note.

Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

2. Revise § 622.61 to read as follows:

§ 622.61 Adjustment of civil money penalties by the rate of inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

The maximum amount of each civil money penalty within FCA's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note), as follows:

(a) Amount of civil money penalty imposed under section 5.32 of the Act for violation of a final order issued under section 5.25 or 5.26 of the Act: the maximum daily amount is $1,100.

(b) Amount of civil money penalty for violation of the Act or regulations:

If the violation occurred—	The maximum daily amount is—
Before October 23, 1996	$500
On or after October 23, 1996 ..	$550

Dated: November 7, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–28881 Filed 11–13–02; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–31–AD; Amendment 39–12950; AD 2002–23–06]

RIN 2120–AA64

Airworthiness Directives; Textron Lycoming AEIO–540, IO–540, LTIO–540, O–540, and TIO–540 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment supersedes an emergency airworthiness directive (AD) that was sent previously to all known U.S. owners and operators of Textron Lycoming (T/L) AEIO–540, IO–540, LTIO–540, O–540, and TIO–540 series reciprocating engines. That action requires replacing certain zinc-plated crankshaft gear retaining bolts. This action still requires replacing certain zinc-plated crankshaft gear retaining bolts, but expands the population of affected engines. This amendment is prompted by two recent failures of zinc-plated crankshaft gear retaining bolts, and a reassessment of the extent to which the suspect bolts may still be present in the field. The actions specified by this AD are intended to prevent loss of all engine power and possible forced landing.

DATES: Effective November 19, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 19, 2002.

Comments for inclusion in the Rules Docket must be received on or before January 13, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–31–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

The applicable service information may be obtained from Lycoming, a Textron Company, 652 Oliver Street, Williamsport, PA 10071; telephone (570) 323–6181. This information may also be obtained electronically on *''http://www.lycoming.textron.com''*. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, 3rd floor, Valley Stream, NY 11581–1200; telephone (516) 256–7537; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On October 1, 2002, the Federal Aviation Administration (FAA) issued emergency airworthiness directive (AD) 2002–20–51 that applies to Textron Lycoming AEIO–540, IO–540, LTIO–540, O–540, and TIO–540 series reciprocating engines. AD 2002–20–51 requires replacing zinc-plated cranshaft gear retaining bolts, part number (P/N) STD–2209, with new cadmium-plated bolts P/N STD–2209. That action was prompted by two recent failures of zinc-plated crankshaft gear retaining bolts with one failure resulting in two fatalities. Since 1999, when the FAA issued AD 99–03–05 that requires the removal of zinc-plated bolts from O–540–F series engines installed on Robinson R44 helicopters, five failures have occurred on fixed-wing airplanes. That condition, if not corrected, could result in loss of all engine power and possible forced landing.

Since that AD was issued, the manufacturer has introduced gear bolt replacement kit, 05K19987, for use in replacing suspect bolts, and has determined that some of the bolts that were recalled on November 10, 1998, were not returned to T/L and may have been installed into engines after November 10, 1998. Based on that determination, the manufacturer has issued Lycoming Service Bulletin (SB) No. 554, Supplement 3, to increase the time period during which these bolts might have been installed in affected engines and to have maintenance facilities return to T/L, all crankshaft gear retaining bolts, part number STD–2209, except those that are included as

part of a gear bolt replacement kit, 05K19987.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Lycoming SB No. 554, dated September 30, 2002, that describes procedures for replacing the existing crankshaft gear retaining bolt.

FAA's Determination of an Unsafe Condition and Required Actions

Since the unsafe condition described is likely to exist or develop on other Textron Lycoming AEIO–540, IO–540, O–540, LTIO–540, and TIO–540 series reciprocating engines of the same type design, the FAA issued emergency AD 2002–20–51 to prevent loss of all engine power and possible forced landing. This AD supersedes AD 2002–20–51, and requires replacing the crankshaft gear retaining bolt:

- Before further flight on engines that have been overhauled or have had the gear retaining bolt replaced between November 27, 1996 and November 10, 1998, and that have not complied with emergency AD 2002–20–51 by using a bolt from the gear bolt replacement kit, 05K19987, and
- Within 10 hours time-in-service (TIS) or 7 days after the effective date of this AD, on engines that have complied with AD 2002–20–51, but did not install a bolt from gear bolt replacement kit, 05K19987, and
- Within 10 hours time-in-service (TIS) or 7 days after the efective date of this AD, on engines that have been overhauled in the field, that have had the gear retaining bolt replaced in the field between November 10, 1998, and the effective date of this AD, or have been repaired by Lycoming between November 27, 1996 and November 10, 1998.

Immediate Adoption of This AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately on October 1, 2002, to all known U.S. owners and operators of Textron Lycoming AEIO–540, IO–540, O–540, LTIO–540, and TIO–540 series reciprocating engines. These conditions still exist. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2002–NE–31–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

- *2002–23–06 Textron Lycoming:* Amendment 39–12950. Docket 2002–NE–31–AD. Supersedes emergency AD 2002–20–51.

Applicability: This airworthiness directive (AD) is applicable to all Textron Lycoming AEIO–540, IO–540, LTIO–540, O–540, and TIO–540 series reciprocating engines with crankshaft gear retaining bolts, part number (P/N) STD–2209 installed, except O–540–F series engines to which AD 99–03–05 applies and on which the bolt has not been subsequently replaced with a bolt other than one included in gear bolt replacement kit 05K19987, and engines with single-drive dual magnetos. These engines are installed on, but not limited to the following aircraft:

Aero Commander. (500), (500–B), (500–E), (500–U)
Aero Mercantil. Gavilan.
Aerofab. Renegade 250.
Bellanca Aircraft. Aries T–250
Britten-Norman. (BN–2).
Cessna Aircraft. Skylane C–182, Stationair C–206, Turbo Skylane T182T, Turbo Stationair T–206
Christen. Pitts (S–2S), (S–2B).
Commander Aircraft. 114TC, 114B

DeHavilland. (DH–114–2X)
Dornier. (DO–28–B1)
Evangel-Air.
Extra-Flugzeugbau. Extra 300.
Found Bros. (FBA–2C), Centennial (100)
Gippsland. GA–200.
Helio. Military (H–250).
King Engineering. Angel.
Maule. MT–7–260, M–7–260, MX–7–235, MT–7–235, M7–235, Star
Rocket (MX–7–235), Super Rocket (M–6–235), Super Std. Rocket (M–7–235).
Mooney Aircraft. ''TLS'' M20M.
Moravan. Zlin-50L
Pilatus Britten-Norman. Islander (BN–2A–26), Islander (BN–2A–27), Islander II (BN–2B–26), Islander (BN–2A–21), Trislander (BN–2A–Mark III–2), Islander (BN–2B).
Piper Aircraft. 700P Aerostar, Aerostar 600A, Aerostar 601B, Aerostar 601P, Apache (PA–23 ''235''), Aztec (PA–23 ''250''), Aztec (PA–23 ''250''), Comanche (PA–24 ''250''), Comanche (PA–24 ''260''), Aztec F, Aztec C (PA–23 ''250''), Cherokee (PA–24 ''250''), Cherokee (PA–28 ''235''), Cherokee Six (PA–32 ''260''), Cherokee Six (PA–32–300). ''LANCE'', Comanche (PA–24 ''150''), Comanche (PA–24 ''250''), Comanche (PA–24), Comanche (PA–24 ''260''), Comanche 260, Mirage (PA–46–350P), Navajo (PA–31), Navajo (PA–31–300), Navy Aztec (PA–23 ''250''), Pawnee (PA–24 ''235''), Pawnee (PA–25 ''260''), Saratoga (PA–32–300), Brave 300, Sequoia 602P, T–1020, T35, Turbo Aztec (PA–23–250), Turbo Saratoga TC (PA–32–301T)
S.O.C.A.T.A. Rallye 235CA., Rallye 235GT, Rallye 235C, TB–20

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

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

To prevent loss of all engine power and possible forced landing, do the following:

Engines That Have Complied With Emergency AD 2002–20–51

(a) For AEIO–540, LTIO–540, IO–540, O–540, and TIO–540 series engines that have complied with emergency AD 2002–20–51 by installing a bolt included in bolt replacement kit 05K19987, no further action is required.

(b) For AEIO–540, LTIO–540, IO–540, O–540, and TIO–540 series engines that have complied with emergency AD 2002–20–51 but did not install a bolt included in bolt replacement kit 05K19987, within 10 hours time-in-service or 10 days after the effective date of this AD, whichever is earlier, replace the crankshaft gear retaining bolt with a new bolt included in gear bolt replacement kit, 05K19987, supplied by Textron Lycoming. Information on replacing the retaining bolt may be found in Lycoming SB No. 554, dated September 30, 2002.

Engines Listed by Serial Number (SN)

(c) For AEIO–540, LTIO–540, IO–540, O–540, and TIO–540 engines with a single-drive dual magneto, and all O–540–F engines to which AD 99–03–05 applies and on which the bolt has not been subsequently replaced with a bolt other than one included in gear bolt replacement kit 05K19987, including any O–540–F engines that are listed by SN in Table 1 of Lycoming SB No. 554, dated September 30, 2002, no further action is required.

(d) Before further flight, for all other engines, replace the crankshaft gear retaining bolt with a new bolt included in gear bolt replacement kit, 05K19987, supplied by Textron Lycoming if your engine SN is listed in Table 1 of Lycoming SB No. 554, dated September 30, 2002. Information on replacing the retaining bolt may be found in Lycoming SB No. 554, dated September 30, 2002.

Bolts That Have Been Replaced During Field Maintenance or Field Overhaul

(e) Replace the crankshaft gear retaining bolt with a new bolt supplied as part of gear bolt replacement kit 05K19987, supplied by Textron Lycoming, within 10 hours time-in-service or 7 days after the effective date of this AD, whichever is earlier,if:

(1) The bolt on your O–540–F series was replaced after compliance with AD 99–03–05 with a bolt that was not included in bolt replacement kit 05K19987. Information on replacing the retaining bolt may be found in Lycoming SB No. 554, dated September 30, 2002.

(2) The bolt on your AEIO, LTIO, IO, O, or TIO–540 series engine was replaced during field maintenance or field overhaul between November 27, 1996 and the effective date of this AD, or if your engine was repaired between November 27, 1996 and November 10, 1998, at Lycoming. Information on replacing the retaining bolt may be found in Lycoming SB No. 554, dated September 30, 2002.

Recording Gear Bolt Replacement Kit Number

(f) After the effective date of this AD, record the number of the gear bolt replacement kit, 05K19987, in the engine records when recording compliance with this AD.

Prohibition Against Installing Gear Retaining Bolts P/N STD–2209

(g) After the effective date of this AD, do not install any crankshaft gear retaining bolt, P/N STD–2209, except one that is included in a Lycoming gear bolt replacement kit, 05K19987, onto any engine listed in this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Documents That Have Been Incorporated by Reference

(j) Engine serial numbers are listed in Table 1 of Lycoming Service Bulletin No. 554, dated September 30, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lycoming, a Textron Company, 652 Oliver Street, Williamsport, PA 17701; telephone (570) 323–6181. This information may also be obtained electronically on ''*http://www.lycoming.textron.com*''. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the *Office of the Federal Register,* 800 North Capitol Street NW., suite 700, Washington, DC.

Effective Date

(k) This amendment becomes effective November 19, 2002.

Issued in Burlington, Massachusetts, on November 8, 2002.

Francis A Favara,

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

[FR Doc. 02–29003 Filed 11–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Financial Institutions; Correction

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Interim final rule; correction.

SUMMARY: FinCEN published in the **Federal Register** of November 6, 2002, a document (67 FR 67547) extending the provision in its regulations that temporarily defers, for certain financial institutions, the application of the anti-money laundering program requirements in section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001. The document inadvertently omitted a minor change to a cross-reference and a minor change that would avoid listing the affected financial institutions twice in the same section. This correction adds both changes.

DATES: This correction is effective November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905–3590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The interim rule that is the subject of these corrections provides guidance under 31 U.S.C. 5318(h)(1).

Need for Correction

As published, the interim rule contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

In interim rule FR Doc. 02–27770, published on November 6, 2002 (67 FR 67547), make the following corrections.

§ 103.170 [Corrected]

On page 68549, in column 2, correct amendatory instruction 2 to read as follows:

2. Section 103.170 is amended by:

a. Revising the section heading;

b. Amending the introductory text of paragraph (a) by removing the words ''paragraph (b)'' and adding in their place the words ''paragraphs (c) and (d)'';

c. Removing and reserving paragraph (a)(2);

d. Revising paragraphs (b) and (c); and

e. Adding paragraph (d).

Dated: November 7, 2002.

Cynthia L. Clark,

Deputy Chief Counsel, Financial Crimes Enforcement Network, Federal Register Liaison.

[FR Doc. 02–28898 Filed 11–13–02; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA134–138–4193a; FRL–7391–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revisions to Allegheny County Articles XX and XXI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Allegheny County portion of the Pennsylvania State Implementation Plan (SIP). EPA is approving a recodification of Allegheny County's air pollution control regulations, from Article XX to Article XXI. EPA is also approving revisions of Allegheny County's Article XXI regulations pertaining to general administrative provisions, emissions standards, emergency episode plans, test methods, and the permitting provisions for new and modified sources. At the same time, EPA is approving definitions associated with the Article XXI provisions. In addition, EPA is removing from the SIP outdated and outmoded Article XX provisions which are no longer codified in Article XXI. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on January 13, 2003 without further notice, unless EPA receives adverse written comment by December 16, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 1998, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of the following:

1. A recodification of the air pollution control regulations for the Allegheny County Health Department (ACHD) from Article XX to Article XXI. These regulations pertain to general administrative provisions, emissions standards, emergency episode plans, test methods, and the permitting provisions for new and modified sources.

2. New and revised general or administrative Provisions.

3. Revised provisions governing reporting, testing, and monitoring.

4. New and revised Permit provisions for new and modified sources.

5. Revised provisions governing control of particulate matter (PM).

6. Revised provisions governing control of sulfur dioxides (SO_2).

7. New and revised provisions governing control of Volatile Organic Compounds (VOC).

8. New and revised provisions governing enforcement of the Article XXI requirements.

The recodification consists of moving the SIP-approved air pollution control regulations from Article XX to Article XXI. Article XXI rules initially became effective on January 1, 1994. On June 12, 1996 (61 FR 29664), EPA initially approved the structure of Article XXI as well as some definitions and regulations as part of the Allegheny County portion of the Pennsylvania SIP, and incorporated this article by the reference into the SIP at § 52.2020(c)(92).

The comprehensive restructuring of ACHD's air pollution control regulations from Article XX to Article XXI became effective October 20, 1995. Pennsylvania provided documentation showing that ACHD held public hearings on all of the above-described revisions on September 6, 1995, in accordance with 40 CFR 51.102.

II. Summary of SIP Revision

The Article XXI provisions which Pennsylvania submitted on behalf of Allegheny County in this action are summarized below. Many of these revisions consist of renumbering changes, or administrative changes, associated with the reorganization of Allegheny County's air pollution control regulations from Article XX to Article XXI. This Article also contains air pollution control regulations which historically have not been included in the Allegheny County SIP because they pertain to provisions not related to the control of the criteria pollutants regulated under the SIP. The Article XXI provisions being reviewed in this SIP revision action and the current SIP citations found in Article XX are summarized as follows:

Article XXI Citation	Title/Subject	Article XX or Article XXI SIP Citation
PART A	**General**	**Chapter I**
2101.01	Short Titles	2101.1
2101.02a; c.1. through c.4; c.6 through c.9.	Declaration of Policy and Purpose	102
2101.02.c.5		802
2101.03	Effective Date and Repealer	2101.3
2101.04	Existing Orders	110
2101.06	Construction and Interpretation	103
2101.07	Administration and Organization	104
2101.07.b.	Administration and Organization—Amendments	104.B.
2101.07.c	Administration and Organization—Air Pollution Control Advisory Committee	104.C
2101.07.d.	Administration and Organization—Right to Information	104.D.
2101.10	Ambient Air Quality Standards	109
2101.11	Prohibition of Air Pollution	105, 201.D.
2101.12	Interstate Air Pollution	106
2101.13	Nuisances	107
2101.14	Circumvention	108
2101.20	Definitions	101, 202.C, 701,801
PART B	**Permits Generally**	**Chapter VIII**
2102.01	Certification	None
2102.02	Applicability	803
2102.03	Permits Generally	804
2102.04	Installation Permits	805
2102.05	Installation Permits for New and Modified Sources	806
2102.06	Major Sources Locating In or Impacting a Nonattainment Area	807
2102.08	Emissions Offset Registration	808
2102.10	Installation Permit Application and Administration Fees	812
PART C	**Operating Permits**	**None**
Subpart 1	Operating Permits (All major and Minor Permits)	None
2103.10.a., b.	Applicability, Prohibitions, Records	None
Subpart 2	**Additional Requirements for Major Permits**	**None**
2103.20.b.4	Applicability, Prohibitions, Records	None
PART D	**Pollutant Emission Standards**	**Chapter IV**
2104.01	Visible Emissions	401
2104.02	Particulate Mass Emissions	2401.6
2104.03	Sulfur Oxide Emissions	403
2104.05	Materials Handling	405
2104.06	Violations	406
2104.07	Stack Heights	407
PART E	**Source Emission and Operating Standards**	**Chapter V**
2105.01	Equivalent Compliance Techniques	501
2105.02	Other Requirements Not Affected	502
2105.03	Operation and Maintenance	503
2105.04	Temporary Shutdown of Incineration Equipment	504
Subpart 1	**VOC Sources**	**None**
2105.10	Surface Coating Processes	505
2105.11	Graphic Arts Systems	531

Article XXI Citation	Title/Subject	Article XX or Article XXI SIP Citation
2105.12	VOC Storage Tanks	507
2105.13	Gasoline Loading Facilities	508
2105.14	Gasoline Dispensing Facilities	None
2105.15	Degreasing Operations	509
2105.16	Cutback Asphalt Paving	510
2105.17	Ethylene Production Processes	511
2105.19a.–c., e.	Synthetic Organic Chemicals & Polymer Manufacturing-Fugitive Sources	534.A.–C., E
2105.19d.		None
Subpart 2	**Slag, Coke, and Miscellaneous Sulfur Sources**	**None**
2105.20	Slag Quenching	519
2105.21	Coke Ovens and Coke Oven Gas	2105.21
2105.22	Miscellaneous Sulfur Emitting Processes	529
Subpart 3	**Incinerators**	**None**
2105.30.a.–e., g.	Incinerators	517
Subpart 4	**Miscellaneous Fugitive Sources**	**None**
2105.40	Permit Source Premises	521
2105.41	Non-Permit Premises	521.1
2105.42	Parking Lots & Roadways	522
2105.43	Permit Source Transport	523
2105.44	Non-permit Transport	523.1
2105.45	Construction and Land Clearing	524
2105.46	Mining	525
2105.47	Demolition	526
2105.48	Areas Subject to Sections 2105.40 Through 2105.47	527
2105.49.a&b	Fugitive Emissions	2105.49.a–e.
Subpart 5	**Open Burning and Abrasive Blasting Sources**	**None**
2105.50	Open Burning	516 (as amended 9/6/83)
Subpart 7	**Miscellaneous VOC Sources**	**None**
2105.70	Petroleum Refineries	None
2105.71	Pharmaceutical Products	None
2105.72	Manufacturer of Pneumatic Rubber Tires	None
PART F	**Air Pollution Episodes**	**Chapter VII**
2106.01	Air Pollution Episode System	702
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2106.02	Air Pollution Source Curtailment Plans	703
2106.03	Episode Criteria	704
2106.04	Episode Actions	705
PART G	**Methods**	**Chapter VI**
2107.01	General	2107.1
2107.02	Particulate Matter	2701.2
2107.03	Sulfur Oxides	603
2107.04	Volatile Organic Compounds	605
2107.05	Nitrogen Oxides	611
2107.06	Incinerator Temperatures	604
2107.07	Coke Oven Emissions	607
2107.08	Coke Oven Gas	608
2107.10	Sulfur Content of Coke	612
2107.11	Visible Emissions	606
2107.20	Ambient Measurements	613
PART H	**Reporting, Testing & Monitoring**	**Chapter II**
2108.01	Reports Required	202
2108.01.a.	Termination of Operations	202.A
2108.01.b	Shutdown of Control Equipment	202.B
2108.01.c	Breakdowns	202.C
2108.01.d.	Cold Start	202.D
2108.01.e	Emissions Inventory Statements	202.E
2108.01.f	Orders	202.F
2108.01.g.	Violations	202.G
2108.02	Emissions Testing	203

Article XXI Citation	Title/Subject	Article XX or Article XXI SIP Citation
2108.03	Continuous Emissions Monitoring	204
2108.04	Ambient Monitoring	205
PART I	**Enforcement**	**Chapter II Chapter III**
2109.01	Inspections	201
2109.02	Remedies	305
2109.03	Enforcement Orders	301
2109.04	Orders Establishing an Additional or more Restrictive Standard	302
2109.05	Emergency Orders	303
2109.06	Civil Penalty Proceedings	306
2109.10	Appeals	None
2109.20	General Conformity	None

In addition, Pennsylvania has requested EPA to remove from the Allegheny County SIP certain Article XX provisions which are not being incorporated into Article XXI. Allegheny County has removed these provisions because they are outdated, outmoded, and remove references to sources which are permanently shut down. These provisions are:

Article XX Regulation	Title or Description	Reason for Removal
101	Definitions of: Commissioners, Committee, Equivalent Opacity, Facility, Rendering, Ringelmann Scale, and Soiling Index.	Definitions are no longer found in Article XXI provisions being incorporated into the SIP.
109	Ambient standard for hydrocarbons	Hydrocarbons are no longer a national ambient air quality standard (NAAQS)
304	Delayed Compliance Orders	ACHD declares this provision to be moot (see section 512 below)
306.E.	Air Pollution Hearing Board	All references to the Hearing Board been removed, as the Board no longer exists.
512	Compliance Schedules	ACHD declares this provision to be moot, as all compliance dates have passed.
902	Shenango Incorporated—Blast Furnace	ACHD has informed EPA that this source is permanently shut down, and is not carried by the current emissions inventory.
903	USX Corp.—Carrie Furnaces & Boilers #3&4; various other SO-x sources.	ACHD has informed EPA that this source no longer exists, and is not carried by the current emissions inventory

III. Evaluation of SIP Revision

In addition to the recodification of Allegheny County's air pollution control regulations from Article XX to Article XXI, and the removal of outdated and outmoded Article XX regualtions, Pennsylvania's October 30, 1998 SIP revision also contains several substantive changes to the new Article XXI regulations:

1. They adopt regulations governing source categories of VOC emissions which are consistent with the emission limits and the scope of sources subject to the requirements of the SIP-approved Pennsylvania Department of Environmental Protection (PADEP) rules (Air Resources, Chapter 129).

2. They update the applicable new source review and permitting provisions.

3. They add new provisions governing general Federal conformity procedures.

4. They update the applicable test methods and air pollution episode provisions.

5. They update the applicable general enforcement provisions, and remove compliance schedules whose final compliance dates have passed.

EPA has evaluated the revisions to Article XXI submitted by Pennsylvania on behalf of ACHD, and has concluded that they are consistent with the current Pennsylvania SIP requirements. EPA has also determined that the Article XXI provisions conform with the applicable Federal statutory and regulatory requirements, strengthen Allegheny County's enforcement procedures, and will not adversely impact ambient air quality levels. Furthermore, EPA has determined that the removal of the Article XX provisions described in this action will not adversely impact ambient air quality levels or Federal enforceability. EPA's evaluation is summarized as follows:

Ozone

Allegheny County has added several Article XXI regulations governing source categories which are currently controlled under the comparable SIP-approved VOC regulations found in Chapter 129 of the PADEP air pollution control regulations. These categories are wood cabinet and furniture coating, gasoline dispensing facilities (Stage II vapor recovery), petroleum refineries, pharmaceutical products, and manufacture of pneumatic rubber tires. EPA has reviewed the Article XXI VOC regulations, and has concluded that they are consistent with the requirements in terms of emissions limits and scope of sources subject to the comparable Chapter 129 rules. Allegheny County has also amended the regulation applicable to synthetic organic chemical and polymer manufacturing—fugitive sources which provides that any alternative control plan must first be approved by EPA before it becomes County-enforceable. Allegheny County has also removed the ambient air quality standard for hydrocarbons, which EPA determines to be consistent with the removal of the national ambient air quality standard (NAAQS) for hydrocarbons from 40 CFR part 50.

Particulate Matter

The PM control measures included in this action update the emergency episode plans, and make negligible

changes to the overall control strategy by adding open land to the list of premises subject to 2105.40. These revisions also remove references to Shenango, Incorporated—Neville Island's Blast Furnaces A and B. Allegheny County states in this SIP revision submittal that these sources no longer exist, and are not carried by the current emissions inventory.

Sulfur Dioxide

The SO_2 control measures included in this action update the emergency episode plans. The revisions also remove references to sources which have permanently shut down, such as the open hearth furnaces and Carrie Furnace Boilers #3 and #4 at the United States Steel Corporation's Homestead Works. This revision also removes the coke oven gas requirement which had applied to the Shenango, Incorporated—Neville Island's Coke Oven Battery #4 Facility. Allegheny County states in this SIP revision submittal that these sources no longer exist, and are not carried by the current emissions inventory.

Lead

EPA is approving the addition of Allegheny County's ambient air quality standard for lead (1.5 micrograms per cubic meter, averaged over a 3-month period) to the chart found in Section 2101.09. EPA has determined that this standard is consistent with the NAAQS for lead found in 40 CFR 50.12.

General Administration and Enforcement

With regard to Allegheny County's general administration and enforcement provisions, this SIP revision consists of removing outdated and outmoded provisions, recodifying the existing SIP-approved provisions from Article XX to Article XXI, reorganizing these provisions within the structure of Article XXI, and updating the test methods and compliance determination provisions. In addition, Allegheny County's Article XXI rules strengthen the provisions related to confidentiality of emissions data, notification of breakdowns, and permit appeals.

New Source Review and Permitting

Allegheny County has recodified its permitting requirements from Article XX, Chapter VIII to the following Parts in Article XXI: Part B (Permits Generally), Part C (Operating Permits), and Part A, Section 2101.20 (Definitions). In addition, Allegheny County has submitted many new and revised permitting and new source review provisions to the aforementioned Article XXI provisions when compared to the SIP-approved Article XX, Chapter VIII provisions. EPA has determined that Allegheny County has adopted these revisions in order to both conform with the revised new source review and permitting requirements of the 1990 Clean Air Act, as amended and conform with similar revised requirements adopted by the PADEP and approved by EPA as revisions to the Pennsylvania SIP.

General Conformity

Allegheny County has added Regulation 2109.20 (General Federal Conformity) to Article XXI. This new regulation, which applies to departments, agencies or instrumentalities of the Federal government, as well as related activities supported, financially assisted, licensed, permitted, or approved by the Federal government, incorporates by reference both the regulations promulgated by EPA in 40 CFR part 51, subpart W and the Commonwealth of Pennsylvania's regulations set forth at 25 Pa. Code Chapter 127.

IV. Final Action

Based on EPA's evaluation, EPA is approving the October 30, 1998 revisions to Allegheny County Articles XX and XXI described in this action as a revision to the Pennsylvania SIP. The incorporation of Article XXI into the SIP allow the citations of Federally enforceable SIP regulations to be consistent with the current Allegheny County regulations. At the same time, EPA is approving the removal from the Allegheny County SIP of Article XX, Regulations 304, 306.B., 512, 902, 903, and the definitions of Regulation 101 listed earlier in this document.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on January 13, 2003 without further notice unless EPA receives adverse comment by December 16, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997),

because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2003. 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 regarding revisions to Allegheny County Articles XX and XXI 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 27, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(192) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(192) Revisions to the Allegheny County Health Department Regulations, Articles XX and XXI, submitted on October 30, 1998 by the Pennsylvania Department Environmental Resources:

(i) Incorporation by reference.

(A) Letter of October 30, 1998 from the Pennsylvania Department of Environmental Protection transmitting a recodification from Article XX to Article XXI of the Rules and Regulations for Air Pollution Control in Allegheny County, as well as substantive revisions to the Article XXI regulations.

(B) The following revisions to Article XXI (formerly Article XX) of the Rules and Regulations for Air Pollution Control in Allegheny County, effective October 20, 1995:

(*1*) Part A (General), Sections 2101.01, 2101.02 (except paragraph .02.b.), 2101.03, 2101.04, 2101.06, 2101.07 (except paragraphs .07.c.2 and .07.c.8), 2101.10 (1-year and 24-hour standards for PM_{10} and sulfur oxides, 1-year standard for nitrogen dioxide, 1-hour and 8-hour standards for carbon monoxide, and 1-hour standard for ozone only) and 2101.11 through 2101.14 inclusive.

(*2*) Part A, Section 2101.20 (Definitions) (Formerly Article XX, Sections 101, 202.C, 701 and 801).

(i) Citation change only: Air curtain destructor, Air dried coating, Air pollution, Air Pollution Control Act, Air pollution control equipment, Alert Stage, Ambient air, Article XI, Automobile, Board of Health, Bottom filling, Bulk gasoline plant, Bulk gasoline terminal, Can coating, Clean Air Act, Clear coat, Clearing and grubbing wastes, Coating, Coil coating, Cold cleaning degreaser, Commonwealth, Conveyorized degreaser, County, Cutback asphalt, Domestic heating plant, Domestic refuse-burning equipment, Drum, Dry cleaning facility, Dust, Emission tests, Emissions, Extreme environmental conditions, Extreme performance coatings, Fabric coating, Flexographic printing, Freeboard ratio, Fuel, Fuel-burning or combustion equipment, Gasoline, Gasoline tank truck, Hard slag ladle pit, Hopper car, Incinerator, Increments of Progress, Install, Large appliances, Lease custody transfer, Light duty trucks, Magnet wire coating, Materials handling, Metal furniture coating, Miscellaneous metal parts and products, National Ambient Air Quality Standard, Net load rating, Nontraditional source, Opacity, Open air, Open burning, Open top vapor degreaser, Pail, Paper coating, Part per million, Particulate matter, Paving operation, Person, PM–10, Potential uncontrolled emission rate, Prime coat, Process, Process equipment, Process fugitive emissions, Publication rotogravure printing, Rated capacity, Refuse, Roll printing, Rotogravure printing, SIP, Single coat, Small gasoline storage tank, Solvent, Standard conditions, State Implementation Plan, Steel production, Surface coating process, Tank car, Topcoat, Trade waste, Transfer efficiency, Type ''O'' waste, Vapor balance system, Vapor disposal system, Vinyl coating, Visible emissions, Wastewater separator, and Waxy heavy-pour crude oil.

(ii) Revised definitions resulting from the format change: Advisory Committee, Air Pollution Episode, Ambient air quality standards, Article, Attainment area, Best Available Control Technology, Breakdown, Board of Commissioners, County-Wide Air Pollution Watch, Flue, Forecast, Localized air pollution watch, Localized incident level, Lowest Achievable Emission Rate, Net air quality benefit, Nonattainment area, Reasonably Available Control Technology, Unclassifiable area, and Volatile organic compound.

(iii) Revised definitions with substantive wording changes: Air contaminant, Allowable Emissions, Authorized representative, Bureau, Capture efficiency, DEP (Formerly DER), Department, Deputy Director, Director, Emission limitation, EPA, Fugitive emissions, Modification, Major modification, Major Source (paragraphs a., b., c., f. and g. only), New Source, Reasonable further progress, Replacement Source, Secondary Emissions, Significant Air Quality Impact, and Source.

(*3*) Part B (Permits Generally), Sections 2102.02, 2102.03.a through h. 2102.04.a through g., 2102.05, 2102.06.a through .e, 2102.08., and 2102.10.

(*4*) Part D (Pollutant Emission Standards), Sections 2104.01, 2401.02.a.1 through .02.a.3, 2104.02.b. through .02.d., 2104.02.f., 2104.02.i, 2104.03, and 2104.05 through 2401.07.

(*5*) Part E (Source Emission and Operating Standards), Sections 2105.01 through 2105.04, 2105.10.a through c., 2105.10.e.1 through 10.e.10, 2105.11 through 2105.13, 2105.15 through 2105.17, 2105.19.a. through c. and .19.e., 2105.20, 2105.22, 2105.30 (except paragraph .30.f), 2105.40 through 2105.48, 2105.49.a, 2105.49.b (formerly 2105.49.e). and 2105.50 (except paragraph .50.d).

(*6*) Part F (Air Pollution Episodes), Sections 2106.01 through 2106.04.

(*7*) Part G (Methods), Sections 2107.01 through 2107.03, 2107.04 (except paragraph .04.h), 2107.05 through 2107.08, 2107.10, 2107.11, and 2107.20.c., g. through j., m., and n.

(*8*) Part H (Reporting, Testing and Monitoring), Sections 2108.01 (except paragraphs .01.e.1.A and B.), 2108.02.a. through f., 2108.03.a. and c. through e., and 2108.04.

(*9*) Part I (Enforcement), Sections 2109.01, 2109.02, (except paragraph .02.a.7), 2109.03.a. (introductory paragraph only), 2109.03.b. through f., 2109.04, 2109.05 and 2109.06.a.1, .06.b, and .06.c.

(C) Addition of the following Article XXI regulations, effective October 20, 1995:

(*1*) Part A, Section 2101.10 (3-month ambient standard for lead).

(*2*) Part A, Section 2101.20, definitions of Administrator, Adverse environmental effect, Affected source, Affected states, Affected unit, Applicable requirement, At the source, BACT (abbreviation only), Cartridge filter, CFR, CO, Common control, Containers and conveyors of solvent, CTG, Designated representative, Draft permit, Emergency, Emissions allowable under the permit, Emissions unit, Existing source, Federal action, Final permit, Fugitive dust emissions, LAER (abbreviation only), Large equipment, Major source applicable requirement (except paragraphs c., d., e., f., g., and j.), Minor operating permit modification, Minor source, NAAQS (abbreviation only), NO_X, Operator, Owner or operator, Part C subpart 2 permit, Part C subpart 2 source, Perceptible leaks, Permit modification, Permit revision, Permitting authority, Person subject to the Clean Air Act, Petroleum solvents, Pharmaceutical tablet coating, Potential to emit, PPM (abbreviation only), Proposed permit, RACT (abbreviation only), Regulated air pollutant (paragraphs a. and b. only), Renewal, Represent the public interest, Responsible official, Significant permit modification, Significant portion of income, Small source, Small equipment, and Solvent recovery dryer.

(*3*) Part B, Sections 2102.01, 2102.03.i through .03.k, 2102.04.h through .04.j, and 2102.06.f.

(*4*) Part C (Operating Permits), 2103.10.a and .10.b, and 2103.20.b.4.

(*5*) Part E, Sections 2105.10.d and 10.e.11, 2105.14, 2105.19.d, 2105.70, 2105.71, and 2105.72.

(*6*) Part H, Sections 2108.02.g. and 2108.03.b.

(*7*) Part I, Sections 2109.06.a.5, 2109.10 and 2109.20.

(D) Removal of the following Article XX regulations, effective October 20, 1995:

(*1*) Sections 109 (ambient standard for hydrocarbons), 304, 306.E, 512, 902, and 903.

(*2*) Section 101, Definitions of Air Pollution Hearing Board, Commissioners, Committee, Equivalent Opacity, Facility, Rendering, Ringelmann Scale, and Soiling Index.

(E) Removal of Article XXI, Sections 2105.21.h.3.B., 2105.49.c, and 2105.49.d.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(192)(i) of this section.

§ 52.2023 [Removed and Reserved]

3. In § 52.2023, paragraph (c) is removed and reserved.

[FR Doc. 02–28696 Filed 11–13–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–144–1–7581; FRL–7407–1]

Approval and Promulgation of Implementation Plans; Texas; Environmental Speed Limit Revision; and Voluntary Mobile Emission Reduction Program Commitment for the Houston/Galveston (HG) Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving, through parallel processing, revisions to the Texas Ozone attainment demonstration State Implementation Plan. This approval covers two separate actions. First, we are approving a revision to the SIP that would suspend the 55 miles per hour (mph) environmental speed limit for all vehicles until May 1, 2005. In the interim, the speed limits would be increased from the current 55 mph speed limit to a level 5 mph below the speed limit that was in place prior to May 2002. The new speed limits would apply in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties. Second, we are approving a clarification of the State enforceable commitment to remedy any shortfalls in emission reductions attributed to the Voluntary Emission Reduction Program (VMEP) in the Houston/Galveston (HG) nonattainment area.

EFFECTIVE DATE: This rule is effective on December 16, 2002.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Peggy Wade of the EPA Region 6 Air Planning Section at (214) 665–7247, e-mail address: *Wade.Peggy@epa.gov.*

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

What Action Are We Taking Today?

We are approving two proposed changes to the Texas SIP. First, we are approving a change to the Environmental Speed Limits in the Houston/Galveston nonattainment area to suspend the 55 mph speed limit until May 1, 2005. In the interim period prior to 2005, speed limits would be increased from the current 55 mph speed limit to a level 5 mph below the speed limit that was in place prior to May 2002. Second, we are approving a clarification of the State's enforceable commitment to remedy any shortfalls in the emissions reductions attributed to the VMEP so as to achieve all necessary reductions by the 2007 attainment date.

As is explained in the proposal (67 FR 60633, September 26, 2002) and below in response to comments, we have concluded that these revisions meet all

applicable requirements and will not interfere with attainment or rate of progress.

What Is the Background of These Revisions to the SIP?

On July 16, 2002, the Chairman of the Texas Commission on Environmental Quality (TCEQ) submitted to EPA for parallel processing, described further below, two proposed rule revisions to the SIP. These rule revisions concern the delayed implementation of the 55 mph speed limit for vehicles weighing less than 10,000 pounds; and, clarification of a rule to commit the state to remedy any shortfalls in the emission reductions attributed to the VMEP so as to achieve all necessary reductions by the attainment date.

On September 16, 2002, the Executive Director of the TCEQ submitted to EPA a second option to the environmental speed limit which was under consideration by the TCEQ, in response to comments received on the Dual Speed Limit option. This proposed option would suspend the 55 mph speed limit for all vehicles until May 1, 2005, and, in the interim, would increase, for all vehicles, the current environmental speed limit of 55 mph to 5 mph below the original posted speed limit.

On September 25, 2002, the TCEQ adopted as a SIP revision the second option so that the 55 mph speed limit would be suspended for all vehicles. In the interim period before 2005, the current 55 mph limit would be raised to 5 mph below the limit that was in place prior to May 1, 2002.

In accordance with the request for parallel processing, on September 26, 2002, we proposed approval of the State's revisions to the environmental speed limit and to the clarification of the enforceable commitment pertaining to the VMEP program. We took comment on our proposed approval of both speed limit options that were being considered by the State. We also took comment on approval of the proposed clarifications to the State's enforceable commitment regarding the VMEP program.

What Changes Have Been Made in Response to Comment on the EPA and TNRCC Parallel Proposals?

As explained above, Texas requested that we parallel process these changes to the Texas SIP. Parallel processing means that EPA proposes action on a state rule before it becomes final under state law based on a State's proposed revision. Under parallel processing, EPA takes final action on its proposal if the final, adopted state submission is substantially unchanged from the submission on which the proposed rulemaking was based, or if significant changes in the final submission are anticipated and are adequately described in EPA's proposed rulemaking or result from needed corrections determined by the State to be necessary through review of issues described in EPA's proposed rulemaking.

In this case, as described above, TCEQ changed their approach to environmental speed limits that would be effective prior to May 1, 2005, from a dual speed limit approach to an approach of a single speed limit for all vehicles set 5 mph lower than their original levels. Because TCEQ provided notice in their September 16, 2002, letter that this approach was being considered, EPA was able to propose and take comment on approval of such an option.

With regard to the VMEP proposal, EPA provided minor language clarifications to the State's proposed language during the State's comment period. We proposed approval of the State's clarification of the VMEP commitment provided that the State further incorporated our comments. In their adopted revision, TCEQ agreed to the appropriate language changes.

Who Provided Comments?

We received three comment letters.

(1) An October 28, 2002, letter from Michael W. Behrens, P.E., Executive Director of the Texas Department of Transportation (TxDOT).

(2) An October 24, 2002, letter from Aren Cambre, a private citizen.

(3) An October 28, 2002, E-mail from Ramon Alvarez of Environmental Defense.

How Did EPA Respond to the Comments It Received?

Comments on Speed Limits

Comment: TxDOT provided comments in support of the action delaying implementation of the 55 mph speed limit until May 1, 2005, and increasing the speed limit to a level 5 mph below previously posted speed limits of 65 mph and above.

Response: EPA appreciates the comments and is approving the TCEQ's change to the environmental speed limit strategy.

Comment: One comment urged rejection of the currently proposed rule and future proposed rule that modifies the environmental speed limits in any SIP unless the change is a full cessation of the ESL program. This commenter raised three concerns about the effectiveness of speed limits as a control measure. First, for a variety of reasons the commenter did not believe that reduced speed limits would result in lowering the actual speeds being driven based on experience with the 1974 speed limit. Second, he felt that the emission reductions from a 5 mph reduction in speed limits are not sufficient to be worthwhile. Third, he felt that ESLs are not enforceable under State law.

Response: We do not believe that it is appropriate to disapprove the revision to the State's speed limit strategy based on these comments. Disapproval of the State's proposed revision would only leave in place the previously approved SIP with its requirement for a 55 mph speed limit starting in May 2002. This result would not address the commenter's concerns. EPA's decision to approve the revision is based on whether the proposed changes were consistent with the approved attainment plan. As explained more fully in the proposal (67 FR 60633, September 26, 2002), we were able to make this determination, because the revision is only a delay in full implementation until 2005 and not a relaxation of the measure. Therefore, the emission reductions by the 2007 attainment date are expected to be equivalent to those that would have been achieved by the previous plan. Thus, the revision will not interfere with timely attainment. Also, as noted below, no reductions from this measure were relied on to meet interim rate of progress (ROP) requirements.

EPA will consider the commenter's concerns about the measure's effectiveness as we oversee the implementation of the State Implementation Plan. If we determine that the measures in the plan are not being effectively implemented as the commenter anticipates we will consider making a finding of failure to implement. It the State fails to correct the problem either through more effective implementation or substitute measures, sanctions will have to implemented. We do not anticipate a finding of nonimplementation will be necessary because Texas will weigh the effectiveness of all of the measures in the plan and correct any shortfalls at the mid-course review scheduled for May 2004. Finally, the fact that the reduction from a 5 mph decrease in speeds may be small does not provide grounds for EPA to disapprove the revision. So long as the revision provides any reductions contributing to attainment of the National Ambient Air Quality Standard, EPA must approve it if it meets all applicable requirements.

Comment: Environmental Defense commented that delay in implementation will result in a 10 ton/day hole in the SIP. Specifically, Environmental Defense contends the Clean Air Act requires implementation of measures as expeditiously as practicable and the achievement of minimum rate of progress requirements. They further believe that under the logic of this proposal every control measure could be delayed until 2005, rendering meaningless the ''expeditious as practical'' language of the Act. According to Environmental Defense, if EPA finalizes this proposal as proposed, it must do so in a way that prevents Texas (or any other State) from pointing to this action in support of delays in implementation.

Response: We do not agree that the proposed change will result in a 10 ton/day hole in the SIP. It is true the preliminary analysis using EPA's new MOBILE6 mobile source emissions model, which has not been finalized by the State, indicates that much less emission reduction may be achieved by environmental speed limits than was estimated using MOBILE5a in the approved SIP. The delay in implementation, however, does not result in reduced emission reductions based on the MOBILE5a model. The projected decrease in emission reductions results from improved emission estimation techniques.

To the extent that the analysis using the new Mobile emissions model, once finalized, indicates that this control measure will not achieve as much emission reduction as calculated by the previous version of the model, EPA agrees that Texas should address this concern. Texas has, in fact, committed to a full review of all of the inputs to the attainment plan at the mid-course review which TCEQ has committed to perform by May 1, 2004. At that time, Texas will reevaluate all of the mobile source control measures in the plan using MOBILE6 and has committed to make up any short fall in needed emission reductions. Until this full analysis with MOBILE6 can be completed, EPA believes that it is appropriate to approve this revision to delay full implementation of the measure. Based on the approved attainment demonstration with MOBILE5 emissions modeling, this delay will not interfere with timely attainment as full implementation will occur prior to the attainment date. Furthermore, Texas' plan does not rely on the speed limit controls to meet minimum rate of progress requirements of section 182 of the Act. That is, Texas demonstrates all required rate of progress without any reductions from environmental speed limits.

We do not believe this logic could be interpreted to allow delay of implementation of all control measures. Instead, on a case by case basis, EPA believes it is acceptable for States to consider new information about the effectiveness of control measures and adjust implementation schedules, if warranted, to allow for additional evaluation if significant uncertainty about the effectiveness of the control measure exists, provided that reductions are fully implemented on a schedule to meet all ROP and timely attainment requirements. Finally, EPA notes that the Clean Air Act requires implementation of all reasonably available control measures as expeditiously as practicable. However, if implementation of a measure will not either advance attainment or contribute to required ROP the Act does not require implementation be as expeditious as practicable.

Comments on the Voluntary Measures Commitment

Comment: EPA only received one comment on the VMEP clarification. The comment from Environmental Defense suggested that the State commit to language no less explicit than the following:

Texas commits to achieve, by the attainment date of November 15, 2007, 23 tpd of NO_X emission reductions through the implementation of measures in appendix K.

Response: On September 26, 2002, the TCEQ adopted the following language to clarify its commitment to remedy any shortfall in emissions reductions from the VMEP program:

> The State commits to monitor, assess, and remedy any shortfall in emissions reductions attributed to the VMEP by adopting additional control measures, equivalent to any shortfall, to provide for attainment by 2007. The State retains discretion to determine the specific control measures to remedy the shortfall.

EPA does not believe the language provided by the commenter is necessary for EPA approval. In fact, we believe the State's language referring to providing attainment by 2007 is more appropriate because it necessarily means that the emission reductions must be in place in time to prevent ozone exceedences during the 2007 ozone season and therefore, cannot be delayed until November 15, 2007. In addition, the point of the State's clarification to the VMEP commitment is to confirm that if the VMEP measures in appendix K do not achieve the needed reductions, the State will find new measures to insure the emission reduction goal is met by the attainment date. It, therefore, is not appropriate to restrict the State to the use of the measures in appendix K to meet this commitment.

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). 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 January 13, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: November 4, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 52, 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 SS—Texas

2. In the table in § 52.2270(e) entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' the entries for ''Speed Limit Reduction'' and ''voluntary mobile emissions program'' in the Houston/Galveston area are revised to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

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EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* *	* *	*	*	*
Speed Limit Reduction	Houston/Galveston, TX	9/26/02	11/14/02 and FR cite.	Section 6.3.12.
Voluntary Mobile Emissions Program	Houston/Galveston, TX	9/26/02	11/14/02 and FR cite.	
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[FR Doc. 02–28844 Filed 11–13–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 00–2; FCC 02–287]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises regulations which the Commission adopted to implement certain aspects of the Satellite Home Viewer Improvement Act of 1999. This document addresses petitions for reconsideration filed by the Office of the Commissioner of Baseball, the National Basketball Association, the National Football League, the National Hockey League, and the Division 1–A Athletic Director's Association (''Sports Leagues'') as well as by EchoStar Satellite Corporation (''EchoStar'') and DirecTV, Inc. (''DirecTV''). The modifications to the regulations are largely technical and pertain to notifications of sporting events and programming to be blacked out, as well as to the criteria for eligibility to request sports blackout protection.

DATES: Effective December 16, 2002, except for §§ 76.122(c)(2) and 76.127(c), which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for the amendments to §§ 76.122(c)(2) and 76.127(c).

FOR FURTHER INFORMATION CONTACT: Peter Corea at (202) 418–7200 or via Internet at *pcorea@fcc.gov*. For additional information concerning the information collection(s) contained in this document, contact Les Smith at 202–418–0217, or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order on Reconsideration (''Order''), FCC 02–287, adopted October 10, 2002; released October 17, 2002. The full text of this decision is

available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554, and may 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* or may be viewed via Internet at *http://www.fcc.gov/mb/*.

Paperwork Reduction Act: This Order contains new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. A Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission is published elsewhere in this **Federal Register**.

Synopsis of the Order

Introduction

1. In this Order on Reconsideration, we consider three petitions for reconsideration of the Commission's Report and Order in Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules To Satellite Retransmissions of Broadcast Signals, (65 FR 68082, November 14, 2000) (hereinafter ''Report and Order'') which implemented section 339 of the Communications Act of 1934 (''Act''), as amended by the section 1008 of the Satellite Home Viewer Improvement Act of 1999 (''SHVIA''). Section 339(d)(4) defines ''satellite carrier'' by reference to the definition in the Copyright Act of 1947, as amended, 17 U.S.C. 119(d). The Report and Order adopted rules to apply the network non-duplication, syndicated exclusivity, and sports blackout rules, previously applicable only to cable television systems, to satellite carriers' retransmission of nationally distributed superstations, and to apply the sports blackout rule to satellite carriers' retransmission of network stations. The network non-duplication, syndicated exclusivity, and sports blackout rules (collectively referred to herein as ''the exclusivity rules''), protect exclusive contractual rights that have been negotiated between program providers and broadcasters or other rights holders. The satellite network non-duplication and syndicated exclusivity rules provide that specific programs must be deleted from ''nationally distributed superstations'' delivered to subscribers within a specified area if the programs are subject to exclusive rights pursuant to contracts with local stations. A ''nationally distributed superstation'' is a television broadcast station, licensed by the Commission, that meets the following three criteria: (A) It is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States; (B) on May 1, 1991, it was retransmitted by a satellite carrier and was not a network station at that time; and (C) it was, as of July 1, 1998, retransmitted by a satellite carrier under the statutory license of section 119 of title 17, United States Code. The only television broadcast stations that meet this definition are KTLA–TV (Los Angeles), WPIX–TV (New York), KWGN–TV (Denver), WSBK–TV (Boston), WWOR–TV (New York) and WGN–TV (Chicago).

No new station can meet the date-specific criteria set forth in the definition. The sports blackout rule provides that sporting events carried on distant stations retransmitted to a specified area must be deleted when carriage would violate sporting teams' or leagues' exclusive rights in the local market.

2. The issues raised on reconsideration are largely technical issues pertaining to the operation of the rules. The Office of the Commissioner of Baseball, the National Basketball Association, the National Football League, the National Hockey League, and the Division 1–A Athletic Director's Association (''Sports Leagues'') jointly filed a petition for reconsideration concerning the timing for submitting deletion notifications to satellite carriers and the method of determining when the blackout rule is triggered. EchoStar Satellite Corporation (''EchoStar'') filed a petition for reconsideration concerning the duration of the phase-in period and the timing and application of the notification requirements, with which DirecTV, Inc. (''DirecTV'') joined in part. The Association of Local Television Stations (''ALTV'') and the Motion Picture Association of America (''MPAA''), as well as the Petitioners, filed oppositions or comments in response to the petitions.

3. Our response to the petitions is governed by the Communications Act and our own rules. Reconsideration of a Commission decision is warranted only if the petitioner cites a material error of fact or law, or presents additional facts and circumstances that raise substantial or material questions of fact that were not considered and that otherwise warrant Commission review of its prior action. The Commission will not reconsider arguments that have already been considered. For the reasons stated herein, we deny EchoStar's and DirecTV's petitions and deny in part and grant in part the Sports Leagues' petition. We also take this opportunity to clarify and, where necessary, amend some of the requirements in the Report and Order and the rules.

Background and Summary of Petitions

4. In implementing sections of the SHVIA in the Report and Order, the Commission was guided by the directive to place satellite carriers on equal footing with cable operators, while also taking into consideration that the operational structures of cable operators and satellite carriers are different. To allow satellite carriers a reasonable period of time to adjust to the new non-duplication and syndicated exclusivity rules, the Commission gave carriers 120 days from the time they received blackout request notices to implement the necessary deletions for the first six months the rules were effective. The rules took effect on November 29, 2000. Therefore, the six month period ended May 29, 2001.

5. With respect to the sports blackout rule, the Commission applied the rule to satellite retransmission of nationally distributed superstations as well as to satellite retransmission of network stations. Although the satellite sports blackout rules are very similar to the cable rules, the notification periods in the satellite context differ to ensure that satellite carriers are notified of blackouts as soon as the rights holder has the information in hand. In addition, in order to afford satellite carriers an opportunity to adjust to the new requirements, the Commission provided a phase-in period for implementing the sports blackout rules, albeit somewhat shorter than the phase-in for the non-duplication and syndicated exclusivity rules.

6. EchoStar's petition for reconsideration requests a one-year phase-in period, rather than the 120-day transition provided in the Report and Order. EchoStar also requests a longer notification period for sports blackout requests, and it objects to the application of the sports blackout rule to all network stations. DirecTV's petition for reconsideration joins EchoStar's petition with respect to application of the sports blackout rule to all network stations and the length of the

notification period. The Sports Leagues object to the requirement that notice of sports blackouts be given within 48 hours of the telecast schedule being set. The Sports Leagues also contend that § 76.128 does not precisely track the defunct rule section it was intended to replace.

Order on Reconsideration

Transition Phase-In Period

7. *Background.* In the Report and Order the Commission gave satellite carriers time to phase-in compliance with the new network non-duplication and syndicated exclusivity rules to ensure that they would have adequate equipment and personnel to implement the deletions, and to arrange for programming to substitute for deleted programming. To afford both satellite carriers and broadcasters a reasonable period of time to adjust to the new requirements and review the contract language, the Commission provided that broadcasters would have up to six months from the effective date of the Report and Order to renegotiate contracts, and required that they notify satellite carriers of deletion requests within sixty days of signing a renegotiated contract. For notices provided before June 1, 2001, satellite carriers were given 120 days before they were required to implement the necessary deletions. For notices provided to satellite carriers after June 1, 2001, the normal time requirements—within sixty days of notification—apply. The six month period for renegotiations expired in May, 2001.

8. With respect to the sports blackout rule, the Commission required that rights holders provide sixty days advance notice for any sports blackout that would occur on or before March 31, 2001. As of April 1, 2001, the regular notice requirements, including twenty-four hour notice for changes in previously scheduled blackouts, became applicable. Because satellite carriers were complying with contractually required sports blackouts prior to the implementation of the SHVIA requirements, it was unnecessary to provide the same length of time to phase-in the sports blackout rules as provided for the network non-duplication and syndicated exclusivity rules.

9. In its petition for reconsideration, EchoStar reiterated its request for a one-year phase-in period to assess the ability of its subscriber qualification system to differentiate protection zones for superstation and network programming. Three of the superstations informed EchoStar that the exclusivity rule requirements could require deletion of all programming from 8:30 a.m. to 9 p.m., which would prompt EchoStar to decide not to offer these superstations to their subscribers. EchoStar also stated that if the number and complexity of deletion requests make it necessary to replace its entire conditional access system, the replacement process would take nine to twelve months to complete from the time it receives such requests. EchoStar disagreed with the Commission's conclusions concerning the need for new equipment and suggested the Commission require rights holders to submit deletion requests for a year before they would be implemented. The Sports Leagues, ALTV, and MPAA opposed EchoStar's petition. Further, MPAA asserts that the 120-day notice phase-in period stretches beyond the one-year effective date Congress required in the SHVIA.

10. *Discussion.* The transition period provided in the Report and Order ended in 2001, as did the one-year period EchoStar requested in the original proceeding and again on reconsideration. Nonetheless, we rule on the merits and decline to extend the phase-in period for the implementation of syndicated exclusivity, network non-duplication and sports blackout rules beyond the phase-in periods provided by the Report and Order and rules. The Report and Order rejected EchoStar's proposal for a transition period of one year as unnecessary, impractical and unlikely to assist EchoStar in planning for deletions given that rights holders would not submit deletion requests knowing that they would not be acted upon for a year. Satellite carriers did not demonstrate that they needed additional time to develop new equipment in addition to their existing blackout and conditional access equipment. EchoStar has not provided sufficient justification for its request and has not presented new arguments that would warrant reconsideration of this issue. EchoStar asserts that its system is near capacity, but has not provided evidence of how the capacity was used or how additional burdens affect the capacity. Although we understand that EchoStar did not have specific deletion requests when it submitted comments in the rulemaking proceeding, the potential scope of the deletions required by the statutory mandate were largely apparent when the statute took effect at the end of 1999. We therefore deny EchoStar's petition for reconsideration with respect to lengthening the phase-in periods.

Sports Blackout Rule

The Sports Blackout Rule Applied to Retransmission of Network Stations

11. *Background.* In the Report and Order the Commission applied the sports blackout rule to retransmission of nationally distributed superstations and network stations. The Commission's sports broadcasts rule (''sports blackout rule'') is designed to allow the holder of the exclusive distribution rights of sporting events, to control, through contractual agreements, the display of that event on local cable and, pursuant to the SHVIA, on satellite systems. The sports blackout rule is triggered when a subject sporting event will not be aired live by any local television station carried on a community unit cable system. Under the sports blackout rule, the holder of the rights to the event (*e.g.*, a sports team or league, rather than a broadcaster) has the power to demand that the local cable system or satellite carrier blackout the distant importation of the subject sporting event. The zone of protection afforded by the sports blackout rule generally is 35 miles surrounding the reference point of the broadcast station's community of license in which the live sporting event is taking place. Unlike the network non-duplication and syndicated exclusivity rules, the sports blackout rule applies to retransmission of distant network stations as well as to nationally distributed superstations. In the case of retransmission of network stations, the SHVIA instructed the Commission to apply the cable sports blackout rule to satellite carriers only ''to the extent technically feasible and not economically prohibitive.'' In the Report and Order the Commission considered DirecTV's request that the Commission invoke the ''technical/economic hardship exception of section 339(b)(1)(B)'' and decline to apply any sports blackout requirement on satellite retransmission of network stations. The Commission determined, however, that DirecTV and EchoStar had not provided sufficient information regarding the costs and burdens imposed by the requirement to satisfy the statutory exception. The burden requires a showing that conforming to rules similar to those applicable to cable operators ''would entail a very serious economic threat to the health of the carrier.''

12. EchoStar's petition seeks reconsideration of that decision. EchoStar maintains that ''there was simply no historical evidence available to satellite carriers to illustrate the burdens from future compliance'' and that the benefit to sports rights holders

is small compared to the ''formidable burden'' on satellite carriers. EchoStar notes that the distant network signals in question may only be retransmitted to unserved households of which there are few within any protection zone. The statutory copyright license only permits retransmission of distant signals to ''unserved households.'' Under copyright law ''unserved households'' are those that are unable to receive an over-the-air network signal of Grade B intensity or better. In addition, ''grandfathered'' households, as well as recreational vehicles and commercial trucks, are included in the definition of unserved households. EchoStar follows that ''the limited practical significance of the rules does not necessarily lessen the difficulty that the satellite carrier would still confront in blacking out the sports programming for those few households.'' DirecTV agrees and asserts that blacking out a small area or small number of subscribers in the satellite context is more complex than in the cable context because of the several steps an operator must go through, including encoding information; data entry; scheduling and processing; and triggering each blackout manually by individually watching each event. DirecTV further asserts that these steps ''raise a question of whether the Commission was justified in concluding that the application of sports blackout rules to satellite carrier retransmission of network stations is ''technically feasible and not economically prohibitive.'''

13. EchoStar argues that it is in a better position to make a preliminary estimate of the possible burden of complying with the blackout rules as applied to network programming during the reconsideration process because it has evidence of actual deletion requests, which it could not have had during the initial rulemaking proceeding. EchoStar states that the primary issue determining the impact of network blackout rules is the ''number of different regions that must be defined as possible blackout zones, even more so than the number of programs and events to be blacked out.'' EchoStar describes its anticipated problem in implementing sports blackouts to be a result of the complexity of, and lack of coordination for, blackout zones among the various sports leagues. EchoStar states that its current sports blackout system for ESPN and Fox uses 128 different blackout zones coordinated with individual consumer's receivers, each associated with a single blackout region for twelve categories of sports. EchoStar explains that because several sports teams that are in close proximity will have overlapping blackout zones, it will need to implement ''a mosaic of smaller zone ''pieces''' to make up a complete blackout zone, which will rapidly consume its blackout resources. EchoStar asserts that if it receives blackout requests for zones that differ from its current contractual blackout zones, and if it gets a significant increase in the number of requests, as it expects with the addition of blackout requirements for network stations along with syndicated exclusivity and network non-duplication requests, that it will likely have to replace its existing conditional access system for one with expanded capabilities. EchoStar estimates the costs of system upgrade in the $75 to $100 million range, and also provides an estimated figure of $123.5 million dollars for total system replacement.

14. The Sports Leagues assert that EchoStar does not present any new evidence to substantiate its claimed injury, but instead presents arguments lacking foundation in fact and failing to satisfy the burden imposed by Congress. The Sports Leagues also contend that the 35-mile zone of protection applied to nationally distributed superstations should be the same protection zone used to blackout network stations and, therefore, ''no new codes [in addition to codes for the sports blackout rule as applied to nationally distributed superstations] should be necessary in implementing the [sports blackout rule] for network signals.'' Further the Sports Leagues point out that EchoStar does not attempt to differentiate nationally distributed superstations from network stations. The Sports Leagues argue that EchoStar has failed to support assertions that its coding is ''near capacity'' and cannot therefore accommodate blackouts of sporting events carried on network stations.

15. *Discussion.* EchoStar has presented evidence regarding the potential burden imposed by the sports blackout rule, and suggested that additional capacity demands on its system in connection with providing sports blackout for network stations could require an overhaul of its entire conditional access system, but has not presented evidence of the burdens specifically associated with the application of the sports blackout rule to the retransmission of the signals of network stations. EchoStar asserts that the complexity of and lack of coordination for blackout zones among the various sports leagues creates difficulties in implementing sports blackouts. In connection with this reconsideration proceeding, the four major sports leagues have agreed to use a single, standardized zip code list for purposes of the Sports Blackout Rule and have provided such a list to the satellite carriers. In order to receive blackout protection, § 76.127(b) obligates rights holders to provide detailed information in the blackout notices, including accurate zip code information. Therefore, to ensure accurate application of sports blackout protection, the Sports Leagues will be responsible for keeping the standardized zip code list current. Although satellite carriers' other contractual arrangements may still create the need for multiple codes in each market, the standard zip code list will reduce the overall burdens on satellite carriers in meeting sports blackout requirements. Nevertheless, as the Commission found in the Report and Order, EchoStar's evidence offered for reconsideration does not identify separately the burdens imposed by blacking out network stations and the burdens imposed by blacking out nationally distributed superstations, nor does it provide information on the costs—incremental or total—of deleting network stations. We are, therefore, unable to make a meaningful evaluation of EchoStar's claim that it may not have capacity to implement the required number of sports blackout zones based on the record. Accordingly, we deny EchoStar's petition for reconsideration.

Forty-Eight Hour Notification Period

16. *Background.* In order to activate the protections of the sports blackout rule, specific notification procedures regarding the sporting events to be deleted must be followed. The notification requirement for sports blackout, as historically applied to cable systems, requires several days advance notice, but in certain circumstances can be given as little as twenty-four hours in advance. With respect to cable systems, notifications for regularly scheduled events subject to the sports blackout rule must be received no later than the Monday preceding the calendar week during which the deletion is to be made. Notifications for events not regularly scheduled, or when the schedule is revised, must be received within 24 hours after the time of the deleted telecast is known, but in no event less than 24 hours before the event will take place. Nothing we adopt herein regarding modifications to notice requirements for the satellite sports blackout rule is intended to modify the cable sports blackout rule.

17. In the original rulemaking proceeding, DirecTV described a satellite blackout system that is more complex than cable. The Commission

acknowledged in the Report and Order that although ''the process described by DirecTV did not appear to present such a serious technical or economic burden as to excuse compliance with the sports blackout rules altogether, it does suggest that the challenge of implementing multiple, simultaneous blackouts and identifying and arranging substitute programming is greater for satellite carriers than for cable operators.'' DirecTV proposed a notification period of 60 days prior to the start of a season for sports with a specific season, 60 days prior to the event for non-seasonal but regularly scheduled events, 30 days for events not regularly scheduled, and ten working days for revisions to previously submitted notices. The Commission found that satellite carriers made ''reasonable arguments in support of revising the notification periods in the satellite sports blackout rules to the extent possible without depriving the teams and leagues of their contractual rights by establishing time frames that afford practical protection.''

18. In the Report and Order the Commission found that satellite carriers were complying with contractually mandated sports blackouts, which require that they delete sporting events and provide subscribers with replacement programming. However, recognizing differences in the structure and operation of the satellite and cable industries, the Commission ruled that some adjustment in the application of the sports blackout rules was justified. The Commission found that the lack of specific information in the record limited our ability to finely tailor the notice requirements with respect to satellite sports blackout. The Commission therefore declined to adopt DirecTV's notification proposals, and instead ruled that the sports blackout rules for satellite carriers would retain the same advance notice requirements used in the cable context for regularly scheduled events (notice must be received the Monday before the calendar week in which the deletion is to be made), but would also require that rights holders notify satellite carriers within 48 hours of the time the telecast to be deleted is known.

19. In its petition for reconsideration, EchoStar asserts that the complexity of carrying local sports broadcasts over a nationwide satellite system requires more time to black out programming than for cable operators. EchoStar argues that the rule requiring notice within 48 hours of the time a telecast is scheduled, without establishing a limit on how close in time the scheduling of the event can be to the event itself, does not give satellite carriers enough time to comply because the notice might be delayed until as late as twenty-four hours before the event to be broadcast. EchoStar requests that the Commission reconsider its decision regarding notification periods for sports blackout, and align the notification period with the network non-duplication and syndicated exclusivity rules requiring a minimum of sixty days notice. In addition, EchoStar requests that the Commission not allow deletion requests for unscheduled events.

20. The Sports Leagues state that the requirement that rights holders notify satellite carriers within 48 hours of the time the telecast is known creates a significant and unwarranted burden on the Sports Leagues while also causing confusion on the part of the satellite carries. The rule, according to the Sports Leagues, results in a piecemeal notice scheme where numerous, often unnecessary, notices must be sent. The Sports Leagues explain that the various sports teams make decisions to televise their away games at different times in the pre-season months. The Sports Leagues contend that the rule requires that each time a visiting team sets its away game telecast schedule, and communicates it to the home team or the league, the home team broadcast rights holder must send a notice to the satellite carrier to blackout the games. If, subsequent to the visiting team's decision to telecast, the home team decides to telecast the game in its home market, within 48 hours of that decision, notices countermanding the blackout request must be sent. The Sports Leagues surmise that this rule would require ''hundreds, if not thousands, of notices, an unbelievable burden on the Leagues and an administrative nightmare for the carriers as they attempted to monitor the constant flow of notices coming in.''

21. The Sports Leagues urge the Commission to adopt the same standard of notice for satellite carriers as it has for cable operators. The Sports Leagues state that the cable rule, by allowing notice on the Monday of the week preceding the calendar week of the game, has enabled the Sports Leagues ''to compile national and local telecasting schedules and distribute all notices at one time, it also allows cable operators (even those with systems in dozens of major markets) to receive all notices at one time.'' The Sports Leagues indicate that this procedure has been used in the cable context for over twenty-five years. The Sports Leagues also state that in some circumstances, such as for the NFL, the league may know before the season begins that a team's scheduled games have been sold out and that, therefore, no blackouts will be necessary. The Sports Leagues explain that if the satellite rule followed the cable rule procedures for notification, in the ''vast number of circumstances'' the Leagues would be able to provide notices ''no less than six days before a blackout at the beginning of the season and, in most cases, six months before blackouts at the end of the regular season.'' The Sports Leagues also assert that satellite carriers need only a ''couple of days notice'' to perform blackouts necessitated by regular season and playoff schedule changes. The Sports Leagues also oppose EchoStar's request that the Commission eliminate the twenty-four hour notice provision for revisions to existing notifications and notifications of unscheduled events because that would preclude protection for post-season or rescheduled games.

22. In its opposition, EchoStar argues that the Sports Leagues have not offered any new evidence, study, or specific facts to support changing the rule. Rather, EchoStar suggests the burden of providing notices could be alleviated by better coordination between teams within the Sports Leagues.

23. In response, the Sports Leagues propose a compromise resolution. The Sports Leagues agree to provide, along with a master list of zip codes, a master blackout notice covering every team in a league for all regular season games to be received by carriers no less than fifteen days before the start of a sports season. The Sports Leagues suggest that the use of a fifteen-day period in advance of the season would allow satellite carriers sufficient time to enter the necessary game and zip code information to accomplish the blackout requests.

24. *Discussion*. On reconsideration, we agree that the requirement that rights holders notify carriers 48 hours from the time the telecast to be deleted is known (the ''48-hour rule'') will potentially create significantly more burdensome notice requirements for both rights holders and satellite carriers than intended. We therefore grant the Sports Leagues petition, in part, insofar as the Sports Leagues request modification of the rule. For the same reasons discussed in the Report and Order, we deny EchoStar's and DirecTV's petitions repeating their requests for sixty-day notice periods for scheduled events and elimination of blackout requirements for unscheduled events. As the Commission indicated in the Report and Order, the purpose of the 48-hour rule was to give carriers sufficient time to enter blackout requests and line up substitute programming by ensuring that rights

holders notify satellite carriers as soon as the telecasts are scheduled. However, given that many teams set their telecast schedules at different times over the months leading to the start of a season, our rules can be interpreted to require each team to send out multiple notices to satellite carriers as they sporadically receive the telecast schedules of their opposing teams. Moreover, many of the notices must be subsequently rescinded when the complete telecast schedules of the home teams and visiting teams are reconciled. For example, if, subsequent to sending out blackout notices to satellite carriers of away team telecasts to be deleted, the home team determines that it will also telecast one or more of the same games, then blackout protection would be removed under § 76.127(a), and notifications would need to be sent out under § 76.127(c). This application of the 48-hour rule could indeed result in numerous notices being received by satellite carriers in a confusing and unnecessarily complex manner.

25. We continue to recognize the unique technical challenges that satellite carriers face in implementing sports blackouts and arranging for substitute programming. However, in light of the potential volume of notices created by the rule as applied to the professional sports leagues, we reconsider and amend it to require that rights holders choose between providing notice within 48 hours of the time the telecast to be deleted is known, or fifteen days prior to the commencement of the season, as described below.

26. As EchoStar suggested, some coordination among the teams in the league is necessary in connection with the notice requirement. This is what the Sports Leagues are requesting to do, and have done in connection with the cable rule for years. Therefore, we will permit rights holders for sports with a discernable season to submit blackout notifications for an entire season, but we establish a date certain by when those notifications must be received by satellite carriers. The Sports Leagues have proposed that they can coordinate their teams' telecast schedules and submit notices of blackout requirements for those schedules by fifteen days before the beginning of each league's season. This proposal is reasonable. In connection with the standardized zip code list the Sports Leagues will provide to the satellite carriers, we think that carriers will have enough time to schedule the blackouts and to arrange for substitute programming where needed. This approach is very similar to the implementation of the cable sports blackout rule, while also reflecting the satellite carriers' demonstrated need for additional advance notice. We also recognize that in some circumstances pre-season sporting events will use sports blackout protection similar to regular season games.

27. We will maintain the 48-hour rule for situations where the fifteen-day pre-season notice is impracticable or unnecessary. If the participants in a sports league are able to organize the entire league's telecast schedule before the start of the season, or a pre-season period, blackout notices for that season, or pre-season, may be submitted to satellite carriers all at once fifteen days prior to the start of the season or pre-season. However, should a team or league not be able to provide its entire telecast schedule in advance of a season, or pre-season, the rights holder may send the notices game by game, but must do so within 48 hours of the time the telecast to be deleted is known. For broadcasts of individual sporting events or for sports without a complex league structure or a defined season it will likely be more practical to send blackout notices of regularly scheduled sporting events within 48 hours of the time the telecast to be deleted is known.

Definition of ''Local'' for Purposes of the Application of the Sports Blackout Rules

28. Background. Prior to amending the sports blackout rules in the Report and Order, the sports blackout provisions could be applied ''if the event is not available live on a television broadcast signal carried by the community unit meeting the criteria specified in §§ 76.5(gg)(1) through 76.5(gg)(3) of this part.'' The Commission deleted § 76.5(gg) in its 1993 Order rescinding rate regulation. In the Report and Order the Commission adopted language to replace the deleted provision. In adopting a new standard based on former § 76.5(gg), the Commission shortened and consolidated the provisions of that section and included them in a new rule provision, § 76.128, which was not intended to change the operation of the cable sports blackout rule.

29. In their petition for reconsideration, the Sports Leagues assert that the application of the rule would likely have an unintended effect. The Sports Leagues point out that § 76.128 now defines a ''local'' station as, ''among other things, a station either within 35 miles of the cable or sports event community or one placing a Grade B contour over the cable or sports event community.'' The Sports Leagues assert that under the 1972 must carry rules, Grade B contour stations had no must-carry rights and were subject to deletion under the cable sports blackout rule. The Sports Leagues explain that with respect to cable television systems, a broadcast station transmitting a Grade B signal of a particular game into the 35-mile sports blackout zone of a rights holder could prevent that rights holder from requiring the cable operator to black out a non-televised home game. The Sports Leagues ask us to re-establish the protections for sports blackouts that have existed for over twenty-five years, and to create the same type of protection for satellite importation. The Sports Leagues state that this can be achieved by ''specifically recognizing that coverage by a Grade B contour does not vitiate blackout protection.'' ALTV recognized the problem raised in Sports Leagues' petition, but states that there is insufficient evidence in the record to assess the impact of the request.

30. EchoStar asserts that the Commission revised the definition of ''local'' for purposes of the sports blackout rule in order to simplify the definition and reflect changes in the must carry rules. EchoStar states that the rule now says that the sports blackout will not be triggered when the sports event is available live on a station whose grade B contour covers the community in which the event occurs. EchoStar argues that the revision in the rule is consistent with the purpose of the sports blackout rule, which is to protect gate receipts when a game is not locally available over the air.

31. Discussion. We agree that the revisions to the sports blackout rules may have an unintended effect in rare situations such as those described by the Sports Leagues. Contrary to EchoStar's assertions, it was not the Commission's intention to alter the operation or effect of this part of the rules for cable operators or satellite carriers. To address the points raised by the Sports Leagues, we amend § 76.128 so that it will more closely track the terms and effect of the former § 76.5(gg) by reestablishing that the Grade B contour provision applies only in non-major markets.

Clarification of Non-Duplication Protection Notices

32. Background. Emmis Television Broadcasting, L.P. d/b/a WCKF–TV, Orlando, Florida (''Emmis'') in an *ex parte* submission requested reconsideration and revision of § 76.122 of our rules. Emmis asserts that § 76.122(c)(2) is dissimilar to the notification requirements in the cable context insofar as § 76.122(c)(2) requires the inclusion of specific program

information regardless of an affiliate's ability to furnish that information based on the content of its affiliation contract.

33. Discussion. In the Report and Order, the Commission concluded that stations should notify satellite carriers of exclusivity rights in the same manner required under the cable rules. The Commission intended that the satellite rules would require that the notice asserting exclusivity rights contain the same identifying information about the programming to be deleted and the extent of the exclusivity as required in the cable rules.

34. We take this opportunity to revise § 76.122(c) so that the rule conforms to the cable rules in § 76.94(a) and (b). We take this action partly sua sponte and partly in response to the informal request for clarification of our rules. Broadcasters requesting non-duplication protection from satellite carriers are required to include the name of the program, series or specific episodes for which protection is sought if such information is identified in the station's network agreement.

Procedural Matters

35. *Paperwork Reduction Act of 1995 Analysis*. This Order on Reconsideration contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. A Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission is published elsewhere in this **Federal Register**.

36. *Supplemental Final Regulatory Flexibility Certification*. The Regulatory Flexibility Act of 1980, as amended (RFA), see 5 U.S.C. 605(b), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA, see 5 U.S.C. 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The RFA, see 5 U.S.C. 601(6), generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 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 Small Business Administration (SBA).

37. In the Report and Order adopting the rules, the Commission issued a Final Regulatory Flexibility Analysis. In this Order on Reconsideration, the Commission amends § 76.122 of our rules so that it conforms to the cable rules in § 76.94(a) and (b). The Commission intended that the satellite rules would require that the notice asserting exclusivity rights would contain the same information about the programming to be deleted and the extent of the exclusivity as is required in the cable rules. The correction to this rule requires notices to satellite carriers to contain specific information only when the information is readily available to the rights holder, as similarly required by the cable rules. Therefore, the rule change eases the notification process, and the economic impact on rights holders and satellite carriers will not be significant.

38. The Commission also amends a notification requirement in § 76.127 enabling sports rights holders to submit blackout notices to satellite carriers on an individual basis, or to cover an entire sports season at the rights holder's election. This elective notification scheme potentially reduces the burdens on sports rights holders and satellite carriers in conforming to the satellite sports blackout rule. The modification to this requirement aligns the satellite rule more closely with the application of the cable rule, as intended by the Report and Order. The changes we make to the requirements should not increase or decrease the number of event broadcasts to be blacked out, but should allow for more efficient scheduling and implementation of blackouts, and hence the economic impact on rights holders and satellite carriers will not be significant.

39. Finally, the Commission amends § 76.128 of our rules so that it more closely tracks the former § 76.5(gg) it was intended to replace. In particular, the revision clarifies the definition of local station for purposes of the application of the sport blackout rules. The Commission never intended to alter the operation or effect of this rule, and this aspect of the definition would have had effect only in very rare instances.

40. For the above reasons, we certify that the requirements of this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order on Reconsideration including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Order on Reconsideration (or a summary thereof) and this certification will be published in the **Federal Register**, see 5 U.S.C. 605(b), and will be sent to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

41. *It is ordered*, pursuant to section 405(a) of the Communications Act of 1934, 47 U.S.C. 405(a), and § 1.429 of the Commission's rules, 47 CFR 1.429, that EchoStar's and DirecTV's Petition for Reconsideration *are denied*.

42. *It is further ordered*, pursuant to section 405(a) of the Communications Act of 1934, 47 U.S.C. 405(a), and § 1.429 of the Commission's rules, 47 CFR 1.429, that the Sports Leagues' Petition for Reconsideration *is denied in part and granted in part*.

43. *It is further ordered*, that, pursuant to authority found in Sections 4(i) 4(j), 303(r), and 339 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 339, the amendments to part 76 of the Commission's rules, 47 CFR part 76, as discussed in this Order on Reconsideration and set forth in Appendix B, and the clarifications of those rules discussed in this Order on Reconsideration, *are adopted*, and shall become effective December 16, 2002 except that rules § 76.122(c)(2) and § 76.127(c) that contain information collection requirements under the PRA are not effective until approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

44. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

45. *It is further ordered* that this proceeding *is terminated*.

List of Subjects in 47 CFR Part 76

Cable television, Satellite carriers, Television broadcast stations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.122 is amended by revising paragraph (c)(2) to read as follows:

§ 76.122 Satellite network non-duplication.

* * * * *

(c) * * *

(2) Where the agreement between network and affiliate so identifies, the name of the program or series (including specific episodes where necessary) for which protection is sought;

* * * * *

3. Section 76.127 is amended by revising paragraph (c) to read as follows:

§ 76.127 Satellite sports blackout.

* * * * *

(c)(1) With respect to regularly scheduled events, within forty-eight (48) hours after the time of the telecast to be deleted is known; or, for events that comprise a season or pre-season period, fifteen (15) days prior to the first event of the season or pre-season, respectively; and no later than the Monday preceding the calendar week (Sunday-Saturday) during which the program deletion is to be made. (2) Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

* * * * *

4. Section 76.128 is amended by revising paragraph (b) to read as follows:

§ 76.128 Application of sports blackout rules.

* * * * *

(b) For communities in television markets other than major markets as defined in § 76.51, television broadcast stations within whose Grade B contours the community of the community unit or the community within which the sporting event is taking place is located, in whole or in part;

* * * * *

[FR Doc. 02–28894 Filed 11–13–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 220
Thursday, November 14, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–53–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, A Division of Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD) for Bell Helicopter Textron, A Division of Textron Canada (Bell), Model 407 helicopters, that would have required preflight checking and repetitively inspecting for a crack in certain tailbooms that have not been redesigned and replacing the tailboom if a crack is found. That proposal was prompted by cracking discovered in other areas of certain tailbooms and introduction of a redesigned tailboom with a chemically milled skin, which does not require the current inspections. This action revises the proposed rule by correcting the model applicability, increasing the area of inspection for certain tailbooms, requiring modification of certain tailbooms, and establishing life limits for certain tailbooms. The actions specified by this proposed AD are intended to prevent separation of the tailboom and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before December 16, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–53–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–53–AD.'' The postcard will be date stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an AD for Bell Model 407 helicopters was published in the **Federal Register** on January 31, 2002 (67 FR 4685). That NPRM would have required preflight checking and repetitively inspecting for a crack in certain tailbooms that have not been redesigned and replacing the tailboom if a crack is found. It further proposed that installing tailboom, P/N 407–030–801–201, would constitute terminating action for the requirements of that AD. That NPRM was prompted by cracking discovered in other areas of certain tailbooms and introduction of a redesigned tailboom with a chemically milled skin, which does not require the current inspections. That condition, if not corrected, could result in separation of the tailboom and subsequent loss of control of the helicopter.

Since the issuance of that NPRM, the manufacturer has issued Bell Helicopter Textron Alert Service Bulletin (ASB) No. 407–99–26, Revision C, dated February 28, 2002, that addresses inspection procedures for certain tailbooms. The manufacturer also issued Bell Helicopter Textron ASB No. 407–01–48, Revision B, dated April 25, 2002, that details the modification and re-identification of those certain tailbooms, assigns a life limit, and details new inspection procedures for those re-identified tailbooms. Additionally, ASB 407–01–48 assigns a life limit and details new inspection procedures for another part-numbered tailboom that was modified by the manufacturer. Further, in addition to the redesigned tailboom, P/N 407–030–801–201, referenced in the NPRM, Bell has at least one additional redesigned tailboom, P/N 407–030–801–203, for these helicopters. Transport Canada, which is the airworthiness authority for Canada, has issued a revised AD No. CF–1999–17R2, dated April 5, 2002, to address these changed requirements.

Further, the FAA received three comments to that NPRM proposing changes. Two commenters state that the AD should be changed to state specific tailboom part numbers for specific inspections. They suggest mandating 50 hour time-in-service (TIS) inspections

for tailbooms, part number (P/N) 407–030–801–101 and –105, until mandated modification and re-identification occurs and life limits are imposed. They also suggest mandating 150 hour TIS inspections for modified and re-identified tailbooms and also tailboom, P/N 407–030–801–107, which was modified by the manufacturer before delivery. These changes are requested because the tailbooms are modified to address the cracking problems, and based on engineering evaluation of these modified tailbooms, the inspection intervals can be expanded. The third commenter, the manufacturer, suggests modifying the proposal to incorporate their later revisions to their service bulletins.

The FAA agrees with the proposed changes and the updated manufacturer service information. We continue to propose mandating daily pre-flight checks and initial 25-hour TIS inspections with recurring 50 hour TIS inspections for the tailbooms, P/N 407–030–801–101 and –105, until they are modified and re-identified. Once modified and re-identified as P/N 407–530–014–101 and –103, respectively, the FAA proposes to mandate the 150 hour TIS inspection and assign a 5,000 hour TIS life limit. The 150 hour TIS inspection and 5,000 hour life limit would also apply to the tailboom, P/N 407–030–801–107. Additionally, the cite to tailboom, P/N 407–030–801–101, as a terminating action has been removed since the installation of other redesigned tailbooms may also effectively remove a helicopter from the applicability of this proposal, thereby constituting a terminating action for the requirements of this AD.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 284 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 3.5 work hours per helicopter to accomplish the initial inspections, 1.5 work hours per helicopter to accomplish the recurring inspections, and 18 work hours per helicopter to accomplish the modification. The average labor rate is $60 per work hour. Required parts would cost approximately $1,244 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,254 per helicopter, or $924,136, assuming all U.S. registered helicopters are required to be modified and initially inspected, and have 8 repetitive inspections per year. In its service information, under certain conditions, the manufacturer offers a ''special'' warranty for parts needed for modifying tailbooms, P/N 407–030–801–101 and –105, and a labor allowance of $480.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron, a Division of Textron Canada: Docket No. 2001–SW–53–AD.

Applicability: Model 407 helicopters, serial numbers 53000 through 53475, with tailboom, part number (P/N) 407–030–801–101, –105 or –107, or P/N 407–530–014–101 or –103, (re-identified in accordance with Bell Helicopter Textron (Bell) Alert Service Bulletin (ASB) 407–01–48, Revision B, dated April 25, 2002), installed, certificated in any category.

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

Compliance: Required as indicated.

To prevent separation of the tailboom and subsequent loss of control of the helicopter, accomplish the following:

Applicable tailboom	Compliance time	Actions	In accordance with
(a) Tailboom, P/N 407–030–801–101 and –105, that have not been modified in accordance with Bell ASB 407–01–048, Revision B, dated April 25, 2002.	Before the first flight of each day	Visually check the tailboom for cracks. An owner/operator (pilot) holding at least a private pilot certificate may perform the visual check required by this paragraph, but must enter compliance with this paragraph into the helicopter records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).	Figure 1 of this AD.

Applicable tailboom	Compliance time	Actions	In accordance with
(b) Tailboom, P/N 407–030–801–101 and –105, that have 600 or more hours TIS and have not been modified in accordance with Bell ASB 407–01–48, Revision B, dated April 25, 2002.	Within 25 hours time-in-service (TIS), and thereafter at intervals not to exceed 50 hours TIS.	Visually inspect the tailboom for cracks using a 10x or higher magnifying glass.	Part II of the Accomplishment Instructions of Bell ASB 407–99–26, Revision C, dated February 28, 2002, except contacting Bell is not required.
(c) Tailboom, P/N 407–030–801–101 and –105.	Within 600 hours TIS, but not later than January 31, 2003, unless previously accomplished.	Modify and re-identify tailbooms as P/N 407–530–014–101 and –103, respectively, and install improved horizontal stabilizer assembly, P/N 407–023–800–ALL.	Parts I and III of the Accomplishment Instructions in Bell ASB 407–01–48, Revision B, dated April 25, 2002, and Bell Technical Bulletin No. 407–01–33, dated August 29, 2001, except contacting Bell is not required.
(d) Tailboom, P/N 407–530–014–101 and –103; and P/N 407–030–801–107.	Before further flight after the tailboom is modified and re-identified, unless previously accomplished.	Create a historical service record sheet and assign a life limit of 5,000 hours TIS since initial installation on any helicopter.	Part IV of Accomplishment Instructions in Bell ASB 407–01–48, Revision B, dated April 25, 2002.
(e) Tailboom, P/N 407–530–014–101 and –103; and P/N 407–030–801–107.	Within 150 hours TIS after modification, or within 150 hours TIS since new, and thereafter at intervals not to exceed 150 hours TIS.	Inspect the tailboom for a crack ..	Part IV and V of the Accomplishment Instructions in Bell ASB 407–01–48 Revision B, dated April 25, 2002
(f) All applicable part-numbered tailbooms.	Before further flight	If a crack is found, replace the tailboom.	The applicable maintenance manual.

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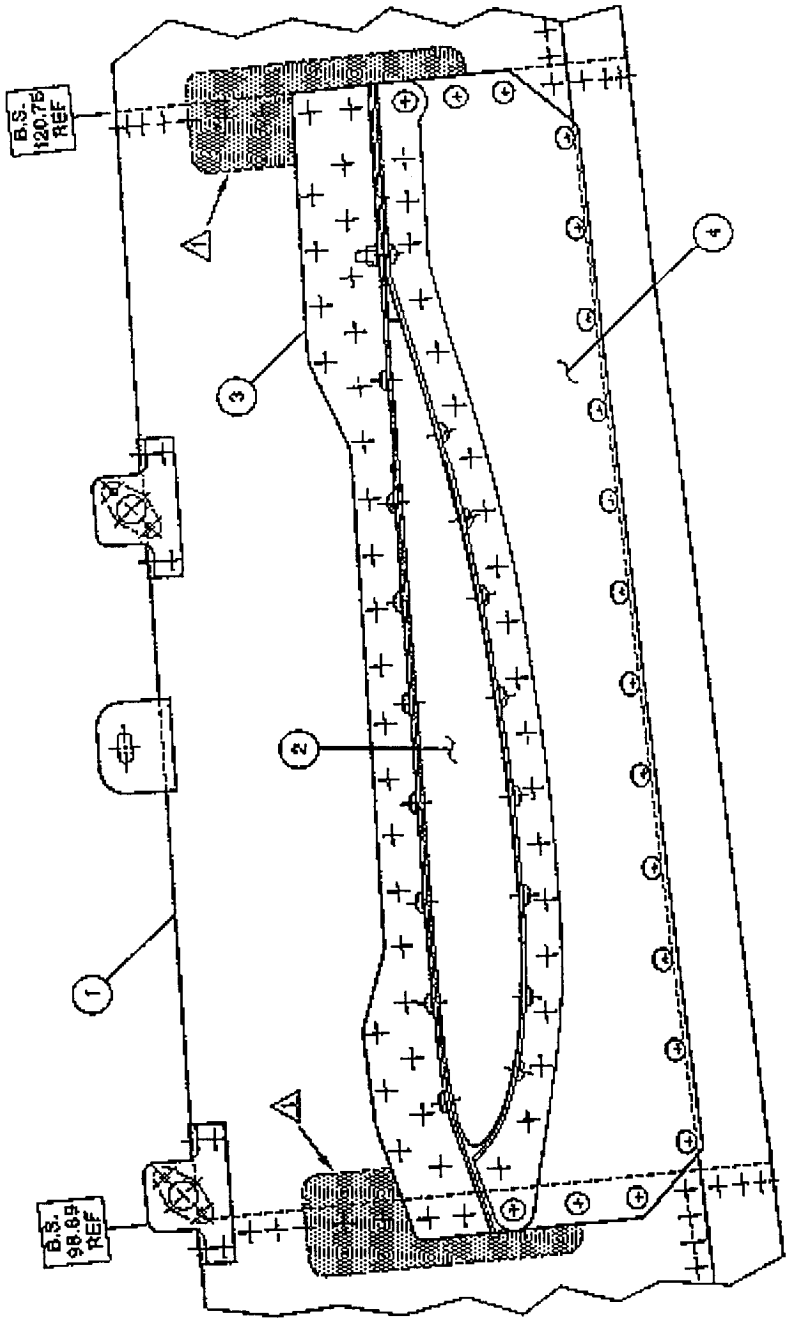

LEGEND

1. Tailboom assembly (Ref.)
2. Horizontal stabilizer (Ref.)
3. Upper support (Ref.)
4. lower support (407-023-800-121)

⚠ Examine these areas for cracks on left side of tailboom only.

2. Horizontal stabilizer not shown for clarity.

Figure 1. Preflight Check of the tailboom

BILLING CODE 4910–13–C

(g) This AD revises the helicopter Airworthiness Limitations section of the maintenance manual by establishing a new retirement life for the tailboom, P/N 407–530–014–101 and —103, and P/N 407–030–801–107 of 5,000 hours TIS.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

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

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–1999–17R2, dated April 5, 2002.

Issued in Fort Worth, Texas, on November 4, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–28859 Filed 11–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 281

RIN 0790–AG47

Settling Personnel and General Claims and Processing Advance Decision Requests

AGENCY: Defense Office of Hearings and Appeals, Office of the General Counsel of the Department of Defense.

ACTION: Proposed rule.

SUMMARY: This rule proposes policy and assigns responsibilities for settling personnel and general claims and for processing requests for an advance decision. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's Authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense. Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignment of the Comptroller General's former duties within the Department of Defense with little impact on the public.

DATES: Consideration will be given to all comments received on or before January 13, 2003.

ADDRESSES: Send comments to the Defense Office of Hearings and Appeals, ATTN: Claims Division, P.O. Box 3656, Arlington, VA 22203–1995.

FOR FURTHER INFORMATION CONTACT: Michael Hipple, 703–696–8510.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

The Director of the Defense Office of Hearings and Appeals has determined that this rule is not a significant rule because it does not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact on entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act''

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have a significant economic impact on a substantial number of small entities because this rule affects members of the Uniformed Services, Federal employees and transportation carriers and provides procedures by which their claims against the United States will be adjudicated. The same minimal requirements for submitting a claim are applicable to members and transportation carriers.

Public Law 96–511, ''Paperwork Reducation Act''

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not impose information collection requirements.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not involve a Federal Mandate 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 and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have federalism implications. This rule does not have substantial direct affects 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.

List of Subjects in 32 CFR Part 281

Administrative practice and procedure, Armed Forces, Claims.

Accordingly, 32 CFR part 281 is proposed to be added to subchapter M to read as follows:

PART 281—SETTLING PERSONNEL AND GENERAL CLAIMS AND PROCESSING ADVANCE DECISION REQUESTS

Sec.
281.1 Purpose.
281.2 Applicability.
281.3 Definitions.
281.4 Policy.
281.5 Responsibilities and functions.

Appendix A to Part 281—Claims Description.

Authority: 10 U.S.C. 2575, 2771, 4712, 9712; 24 U.S.C. 420; 31 U.S.C. 3529, 3702; 32 U.S.C. 714; 37 U.S.C. 554.

§ 281.1 Purpose.

This part implements policy and assigns responsibilities for settling personnel and general claims (under 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, and 32 U.S.C. 714) and for processing requests for an advance decision under 31 U.S.C. 3529.

§ 281.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as ''the DoD Components'').

(b) The Coast Guard, when it is not operating as a Service in the Navy, and the Commissioned Corps of the Public Health Service and the National Oceanic and Atmospheric Administration, to the extent of the authority provided by law or delegated by the Director, Office of Management and Budget (hereafter referred to collectively as ''the non-DoD Components'').

§ 281.3 Definitions.

(a) *Armed Forces.* The Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

(b) *Claim.* A demand for money or property under one of the following statutes: 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, or 32 U.S.C. 714.

(c) *Secretary concerned.* The Secretary of the Army, with respect to matters concerning the Army. The Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a Service in the Navy. The Secretary of the Air Force, with respect to matters concerning the Air Force. The Secretary of Transportation, with respect to matters concerning the Coast Guard when it is not operating as a Service in the Navy. The Secretary of Commerce, with respect to matters concerning the NOAA. The Secretary of Health and Human Services, with respect to matters concerning the PHS.

(d) *Settlement.* A claim and the amount due that is administratively determined to be valid.

(e) *Uniformed Services.* The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Commissioned Corps of the PHS and the NOAA.

§ 281.4. Policy.

It is DoD policy that:

(a) The claim settlement and advance decision authorities that, by statute or delegation, are vested in the Department of Defense or the Secretary of Defense shall be exercised by the officials designated in this part. Appendix A to this part describes the claims included under these functional authorities.

(b) Claims shall be settled and advance decisions shall be rendered in accordance with pertinent statutes and regulations, and after consideration of other relevant authorities.

§ 281.5 Responsibilities and functions.

(a) The *General Counsel of the Department of Defense* shall:

(1) Settle claims that the Secretary of Defense is authorized to settle under 31 U.S.C. 3702 (including claims under 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, and 32 U.S.C. 714).

(2) Consider, and grant or deny, a request by the Secretary concerned under 31 U.S.C. 3702 to waive the time limit for submitting certain claims.

(3) Render advance decisions under 31 U.S.C. 3529 that the Secretary of Defense is authorized to render, and oversee the submission of requests for an advance decision arising from the activity of a DoD Component that are addressed to officials outside the Department of Defense.

(4) Develop overall claim settlement and advance decision policies; and promulgate procedures for settling claims, processing requests for an advance decision (including overseeing the submission of requests for an advance decision arising from the activity of a DoD Component that are addressed to officials outside the Department of Defense), and rendering advance decisions. Procedures for settling claims shall include an initial determination process and a process to appeal an initial determination.

(b) The *Heads of the DoD Components* shall:

(1) Establish procedures within the Component for processing claims and for submitting requests for an advance decision arising from the Component's activity in accordance with this part and procedures promulgated under paragraph (a)(4) of this section.

(2) Pay claims under 10 U.S.C. 2771 and 32 U.S.C. 714, if applicable.

(3) Ensure compliance with this part and policies and procedures promulgated under paragraph (a)(4) of this section.

(c) The *Heads of the Non-DoD Components,* with respect to claims arising from that Component's activity under 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, or 37 U.S.C. 554, shall:

(1) Establish procedures within the Component for processing claims and for submitting requests for an advance decision in accordance with this part and procedures promulgated under paragraph (a)(4) of this section.

(2) Pay claims under 10 U.S.C. 2771, if applicable.

Appendix A to Part 281—Claims Description

The Secretary of Defense is authorized to perform the claim settlement and advance decision functions for claims under the following statutes:

(a) 31 U.S.C. 3702, concerning claims in general when there is no other settlement authority specifically provided for by law.[1]

(b) 10 U.S.C. 2575, concerning the disposition of unclaimed personal property on a military installation.

(c) 10 U.S.C. 2771, concerning the final settlement of accounts of deceased members of the armed forces (but not the National Guard).[2]

(d) 24 U.S.C. 420, 10 U.S.C. 4712, and 10 U.S.C. 9712 concerning the disposition of the effects of deceased residents of the Armed Forces Retirement Home.

(e) 37 U.S.C. 554, concerning the sale of personal property of members of the Uniformed Services who are in a missing status.

(f) 32 U.S.C. 714, concerning the final settlement of accounts of deceased members of the National Guard.[3]

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28726 Filed 11–13–02; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 282

RIN 0790–AG89

Procedures for Settling Personnel and General Claims and Processing Advance Decision Requests

AGENCY: Defense Office of Hearings and Appeals, Office of the General Counsel of the Department of Defense.

ACTION: Proposed rule.

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[1] This includes claims involving Uniformed Services members' pay, allowances, travel, transportation, payment for unused accrued leave, retired pay, and survivor benefits, and claims for refunds by carriers for amounts collected from them for loss or damage to property they transported at Government expense; also included are other claims arising from the activity of a DoD Component. However, the Director of the Office of Personnel Management performs these functions for claims involving civilian employees' compensation and leave; and the Administrator of General Services performs these functions for claims involving civilian employees' travel, transportation, and relocation expenses.

[2] Claims under this statute are actually settled under the authority in 31 U.S.C. 3702, because there is no specific settlement authority in the statute.

[3] Claims under this statute are actually settled under the authority in 31 U.S.C. 3702, because there is no specific settlement authority in the statute.

SUMMARY: This rule proposes policy and prescribes procedures for processing and settling personnel and general claims and for processing requests for an advance decision. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense. Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignments of the Comptroller General's former duties within the Department of Defense with little impact on the public.

DATES: Consideration will be given to all comments received on or before January 13, 2003.

ADDRESSES: Send comments to the Defense Office of Hearings and Appeals, ATTN: Claims Division, P.O. Box 3656, Arlington, VA 22203–1995.

FOR FURTHER INFORMATION CONTACT: Michael Hipple, 703–696–8510.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

The Director of the Defense Office of Hearings and Appeals has determined that this rule is not a significant rule because it does not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact on entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive order.

Public Law 96–354, ''Regulatory Flexibility Act''

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have a significant economic impact on a substantial number of small entities because this rule affects members of the Uniformed Services, Federal employees and transportation carriers and provides procedures by which their claims against the United States will be adjudicated. The same minimal requirements for submitting a claim are applicable to members and transportation carriers.

Public Law 96–511, ''Paperwork Reduction Act''

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not impose information collection requirements.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not involve a Federal Mandate 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 and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

The Director of the Defense Office of Hearings and Appeals has certified that this rules does not have federalism implications. This rule does not have substantial direct affects 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.

List of Subjects in 32 CFR Part 282

Administrative practice and procedure, Armed forces, Claims.

Accordingly, 32 CFR part 282 is proposed to be added to subchapter M to read as follows:

PART 282—PROCEDURES FOR SETTLING PERSONNEL AND GENERAL CLAIMS AND PROCESSING ADVANCE DECISION REQUESTS

Sec.
282.1 Purpose.
282.2 Applicability.
282.3 Definitions.
282.4 Policy.
282.5 Responsibilities and functions.
282.5 Submitting a claim.
282.7 Processing a claim.
282.8 Appeals.
282.9 Disposition of claims upon settlement in general.
282.10 Requests for an advance decision.
282.11 Publication.
Appendix A to Part 282—Claims Description
Appendix B to Part 282—Submitting a Claim
Appendix C to Part 282—Processing a Claim
Appendix D to Part 282—Appeals
Appendix E to Part 282—Requests for an Advance Decision Affecting a Claim

Authority: 5 U.S.C. 552a; 10 U.S.C. 2575, 2771, 4712, 9712; 24 U.S.C. 420; 31 U.S.C. 3529, 3702; 32 U.S.C. 714; 37 U.S.C. 554.

§ 282.1 Purpose.

This part implements policy under 32 CFR part 281 and prescribes procedures for processing and settling personnel and general claims under 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, 32 U.S.C. 714 and for processing requests for an advance decision under 31 U.S.C. 3529 related to those personnel and general claims.

§ 282.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as ''the DoD Components'').

(b) The Coast Guard, when it is not operating as a Service in the Navy, and the Commissioned Corps of the Public Health Service and the National Oceanic and Atmospheric Administration, to the extent of the authority provided by law or delegated by the Director, Office of Management and Budget (hereafter referred to collectively as ''the non-DoD Components'').

(c) Certain claim settlement and advance decision functions that, by statute or delegation, are vested in the Department of Defense or the Secretary of Defense. Appendix A to this part describes the claims included under these functional authorities.

§ 282.3 Definitions.

(a) *Armed Forces.* The Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

(b) *Claim.* A demand for money or property under one of the following statutes: 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, or 32 U.S.C. 714.

(c) *Committee.* The person or persons invested, by order of a proper court, with the guardianship of a minor or

incompetent person and/or the estate of a minor or incompetent person.

(d) *Component concerned.* The Component from whose activity a claim arose.

(e) *Final action.* A finding by the appropriate official under this part concerning a claim from which there is not right to appeal or request reconsideration, or concerning which the time limit prescribed in this part for submitting an appeal or request for reconsideration has expired without such a submission.

(f) *Member.* A member or former member of the Uniformed Services.

(g) *Secretary concerned.* The Secretary of the Army, with respect to matters concerning the Army. The Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a Service in the Navy. The Secretary of the Air Force, with respect to matters concerning the Air Force. The Secretary of Transportation, with respect to matters concerning the Coast Guard when it is not operating as a Service in the Navy. The Secretary of Commerce, with respect to matters concerning the NOAA. The Secretary of Health and Human Services, with respect to matters concerning the PHS.

(h) *Settlement.* A claim and the amount due that is administratively determined to be valid.

(i) *Uniformed Services.* The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Commissioned Corps of the PHS and the NOAA.

§ 282.4 Policy.

It is DoD policy that claims shall be processed and settled and advanced decisions rendered in accordance with all pertinent statutes and regulations, and after consideration of other relevant authorities.

§ 282.5 Responsibilities and functions.

(a) The *General Counsel of the Department of Defense*, or designee, shall:

(1) Upon the request of the Director, DOHA, consult on, or render legal opinions concerning, questions of law that arise in the course of the performance of the Director's responsibilities under paragraph (b) of this section.

(2) Render advance decisions under 31 U.S.C. 3529 and oversee the submission of requests for an advance decision arising from the activity of a DoD Component that are addressed to officials outside DoD in accordance with this part.

(b) The *Director, Defense Office of Hearings and Appeals (DOHA),* or designee, under the General Counsel of the Department of Defense (as the Director, Defense Legal Services Agency), shall:

(1) Consider, and grant or deny, a request by the Secretary concerned under 31 U.S.C. 3702(e) to waive the time limit for submitting certain claims in accordance with 32 CFR part 281 and this part.

(2) Consider appeals from an initial determination, and affirm, modify, reverse, or remand the initial determination in accordance with 32 CFR part 281, this part, and relevant DoD Office of General Counsel opinions.

(c) The *House of the DoD Components,* or designees, shall:

(1) Process claims under 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, and 32 U.S.C. 714 in accordance with this part.

(2) Ensure that requests for an advance decision that originate in the Component are prepared and submitted in accordance with this part.

(3) Pay claims as provided in a final action in accordance with this part.

(d) The *Heads of the Non-DoD Components,* or designees, with respect to claims arising from the Component's activity under references 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, or 37 U.S.C. 554, shall:

(1) Process claims in accordance with this part.

(2) Ensure that requests for an advance decision that originate in the Component are prepared and submitted in accordance with this part.

(3) Pay claims as provided in a final action in accordance with this part.

§ 282.6 Submitting a claim.

The procedures a claimant must follow to submit a claim are at Appendix B to this part

§ 282.7 Processing a claim.

The procedures a Component must follow in processing a claim are at Appendix C to this part.

§ 282.8 Appeals.

The procedures for appealing findings in initial determinations are at Appendix D to this part.

§ 282.9 Disposition of claims upon settlement in general.

(a) The appropriate official for the Component concerned shall pay a claim in accordance with the final action concerning the claim.

(b) Where state law requires, a committee must be appointed for a minor or incompetent person in accordance with state law before payment may be made.

§ 282.10 Requests for an advance decision.

Procedures for requesting an advance decision under 31 U.S.C. 3529 concerning the propriety of a payment or voucher certification related to claims addressed in this part are at Appendix E to this part.

§ 282.11 Publication.

In accordance with 5 U.S.C. 552a, the Director, DOHA, or designee, shall make redacted copies of responses to request for reconsideration and advance decisions by the General Counsel of the Department of Defense, or designee, available for public inspection and copying at DOHA's public reading room and on the worldwide web.

Appendix A to Part 282—Claims Description

The Secretary of Defense is authorized to perform the claims settlement and advance decision functions for claims under the following statutes:

(a) 31 U.S.C. 3702, concerning claims in general when there is no other settlement authority specifically provided for by law.[1]

(b) 10 U.S.C. 2575, concerning the disposition of unclaimed personal property on a military installation.

(c) 10 U.S.C. 2771, concerning the final settlement of accounts of deceased members of the armed forces (but not the National Guard).[2]

(d) 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, concerning the disposition of the effects of deceased residents of the Armed Forces Retirement Home.

(e) 37 U.S.C. 554, concerning the sale of personal property of members of the Uniformed Services who are in a missing status.

(f) 32 U.S.C. 714, concerning the final settlement of accounts of deceased members of the National Guard.[3]

Appendix B to Part 282—Submitting a Claim

(a) *Who May Submit a Claim.* Any person (''claimant'') may submit a claim who has a demand for money or property against the government under 31 U.S.C. 3702, 10 U.S.C.

[1] This includes claims involving Uniformed Services members' pay, allowances, travel, transportation, payment for unused accrued leave, retired pay, and survivor benefits, and claims for refund by carriers for amounts collected from them for loss or damage to property they transported at Government expense; also included are other claims arising from the activity of a DoD Component. However, the Director of the Office of Personnel Management performs these functions for claims involving civilian employees' compensation and leave; and the Administrator of General Services performs these functions for claims involving civilian employees' travel, transportation, and relocation expenses.

[2] Claims under this statute are actually settled under the authority in 31 U.S.C. 3702, because there is no specific settlement authority in the statute.

[3] Claims under this statute are actually settled under the authority in 31 U.S.C. 3702, because there is no specific settlement authority in the statute.

2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, or 32 U.S.C. 714.

(b) *Where to Submit a Claim.* A claimant must submit a claim to the Component concerned [4] (that is, to the Component from whose activity the claim arose) in accordance with guidance provided by that Component. A claim that is submitted somewhere other than to the Component concerned does not stop the running of the time limit in paragraph (f) of this Appendix. It is the claimant's responsibility to submit a claim properly.

(c) *Format of a Claim.* A claimant must submit a claim in the format prescribed by the Component concerned. It must be written and be signed by the claimant (in the case of a claim on behalf of a minor or incompetent person, there are additional requirements explained at paragraph (e) of this Appendix) or by the claimant's authorized agent or attorney (there are additional requirements explained at paragraph (d) of this Appendix). In addition, it should:

(1) Provided the claimant's social security number or Employee Identification number.

(2) Provide the claimant's mailing address.

(3) Provide the claimant's telephone number.

(4) State the amount claimed.

(5) State the reasons why the government owes the claimant that amount.

(6) Have attached copies of documents referred to in the claim.

(7) Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the claimant or other persons in support of the claim.

(d) *Claim Submitted by Agent or Attorney.* In addition to the requirements in paragraph (c) of this Appendix, a claim submitted by the claimant's agent or attorney must include or have attached a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the claimant.

(c) *Claim Submitted on Behalf of a Minor or Incompetent Person.* In addition to the requirements in paragraph (c) of this Appendix:

(1) If a guardian or committee has not been appointed, a claim submitted on behalf of a minor or incompetent person must:

(i) State the claimant's relationship to the minor or incompetent person.

(ii) Provide the name and address of the person having care and custody of the minor or incompetent person.

(iii) Include an affirmation that any moneys received will be applied to the use and benefit of the minor or incompetent person, and that the appointment of a guardian or committee is not contemplated.

(2) If a guardian or committee has been appointed, a claim on behalf of a minor or incompetent person must include or have attached a certificate of the court showing the appointment and qualification of the guardian or committee.

(f) *When to Submit a Claim.* A claimant must submit a claim so that it is received by the Component concerned within the time limit allowed by statute.

(1) Claimants must submit claims within these statutory time limits.[2]

(i) Claims on account of Treasury checks under 31 U.S.C. 3702(c) must be received within 1 year after the date of issuance.

(ii) Claims under 31 U.S.C. 3702(b) (most other claims, including claims under 10 U.S.C. 2771 and 32 U.S.C. 714) must be received within 6 years of the date the claim accrued. (A claim accrues on the date when everything necessary to give rise to the claim has occurred.) The time limit for claims of members of the Armed Forces that accrue during war or within 5 years before war begins, is 6 years from the date the claim accrued or 5 years after peace is established, whichever is later.

(iii) Claims under 10 U.S.C. 2575(d)(3) must be received within 5 years after the date of the disposal of the property to which the claim relates.

(iv) Claims under 24 U.S.C. 420(d)(1), 10 U.S.C. 4712, and 10 U.S.C. 9712 must be received within 6 years after the death of the deceased resident.

(v) Claims under 37 U.S.C. 554(h) must be received before the end of the 5-year period from the date the net proceeds from the sale of the missing person's personal property are covered into the Treasury.

(2) The time limits set by statute may not be extended or waived.[3] Although the issue of timeliness normally will be raised upon initial submission (as explained at Appendix C to this part, paragraph (b)), the issue may be raised at any point during the claim settlement process.

(g) *Claimant Must Prove the Claim.* The Claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed.

Appendix C to Part 282—Processing a Claim

(a) *Initial Component Processing.* Upon receipt of a claim, the Component concerned[1] must:

(1) Date stamp the claim on the date received.

(2) Determine whether the claim was received within the required time limit (time limits are summarized at Appendix B to this part, paragraph (f)), and follow the procedures in paragraph (b) of this Appendix if the claim was not timely.

(3) Investigate the claim.

(4) Decide whether the claimant provided clear and convincing evidence that proves all or part of the claim.

(5) Issue an initial determination that grants the claim to the extent proved or denies the claim, as appropriate. The initial determination must state how much of the claim is granted and how much is denied, and must explain the reasons for the findings.

(6) Notify the claimant of the initial determination. The Component must send the claimant a copy of the initial determination and a notice that explains:

(i) The action the Component will take on the claim, if the initial determination is or becomes a final action (the finality of an initial determination is explained at paragraph (c) of this Appendix); and

(ii) The procedures the claimant must follow to appeal an initial determination that denies all or part of the claim (those appeal procedures are explained at Appendix D to this part), if applicable.

(b) *Untimely Claims.* When the Component concerned determines that a claim was not received within the statutory time limit, the component must make an initial determination of untimely receipt.

(1) The initial determination must cite the applicable statute and explain the reasons for the finding of untimely receipt. The Component must send the initital determination to the claimant with a notice that:

(i) States the claim was not received within the statutory time limit and, therefore, may not be considered, unless that finding is reversed on appeal, and explains how the claimant may appeal the finding (those appeal procedures are explained at Appendix D to this part); and either

(ii) If the claim does not qualify under 31 U.S.C. 3702(e), states that the statutory time limit may not be extended or waived; or

(iii) If the claim does qualify under 31 U.S.C. 3702(e), states that the claim may be further considered only if the time limit is waived, and explains how the claimant may apply for a Secretarial request for waiver (paragraph (d) of this Appendix explains which claims qualify and the procedures for Secretarial requests).

(2) Except in cases where a claimant has applied under paragraph (d) of this Appendix to have the Secretary concerned request a waiver of the time limit, the Component must return the claim to the claimant when the initial determination becomes a final action with a notice that the finding in the initial determination is final and, therefore, the claim may not be considered. If the claim qualifies under 31 U.S.C. 3702, the notice must also state that the claimant may resubmit the claim with an application under paragraph (d) of this Appendix.

(c) *Finality of an Initial Determination.* An initial determination that grants all of a claim is a final action when it is issued. Otherwise, an initial determination (including one of untimely receipt) is a final action of the Component concerned does not receive an

[4] Depending on the context, the term ''Component concerned'' or ''Component,'' as used in this enclosure, means the official designated by the head of the Component concerned or by Component regulations to perform the function or take the action indicated.

[2] Under the Soldiers' and Sailors' Civil Relief Act of 1940, periods of active military service are not included in calculating whether a claim has been received within these statutory time limits.

[3] There is an exception for certain claims described in 31 U.S.C. 3702(e). In those cases, the Secretary of Defense may, upon the request of the Secretary concerned, waive the time limits in paragraphs (f)(1)(i) and (f)(1)(ii) of this Appendix. Appendix C of this part, paragraph (d), explains which claims qualify and the procedures that apply.

[1] Depending on the context, the term ''Component concerned'' or ''Component,'' as used in this Appendix, means the official designated by the head of the Component concerned or by Component regulations to perform the function or take the action indicated.

appeal within 30 days of the date of the initial determination (plus any extension of up to 30 additional days granted by the Component concerned for good cause shown).

(d) *Secretarial Requests for Waiver of Certain Time Limits.* When the Component concerned determines that a claim was not received within the statutory time limit is 31 U.S.C. 3702(b) or (c), the claimant may apply to have the Secretary concerned request a waiver of the time limit. Waiver is permitted only for those claims that satisfy the requirements of 31 U.S.C. 3702(e).[2] This provision confers no right or entitlement on a claimant. It is solely within the discretion of the Secretary concerned whether to request such a waiver in a particular case.

(1) The claim must contain the information and documents that are generally required for claims (those requirements are explained at Appendix B to this part).

(2) The Component concerned must investigate the claim and make an initial determination concerning the merits of the claim (these are the actions required in paragraphs (b), (c), and (d) of this Appendix.

(3) If the initial determination grants all or part of the claim, and if the Secretary concerned agrees with the determination, the Secretary may request that the time limit be waived. Requests must be in writing and signed by the Secretary concerned. (This authority may not be delegated below the level of Under Secretary.)

(i) The Secretary concerned shall forward the request to: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, VA 22203–1995.

(ii) The entire record concerning the claim, including the initial determination, must be attached to the request.

(4) The Director, DOHA, must review the request and the written record and must:

(i) Grant the request and waive the statutory time limit, if the Director finds that all or part of the claim has been proven. The Director may also modify the finding concerning the amount of the claim that has been proven.

(ii) Deny the request, if the Director finds that no part of the claim has been proven.

(iii) Notify the Secretary concerned and the claimant of the decision and the reasons for the findings.

(5) In the event the Director, DOHA, denies the request, or grants the request but modifies the finding concerning the amount of the claim proven, the Secretary concerned or the claimant may request reconsideration (the procedures are explained at Appendix D to this part). The Director's decision is a final action if the Director does not receive a request for reconsideration within 30 days of the date of the Director's decision (plus any extension of up to 30 additional days granted by the Director for good cause shown).

[2] When this Instruction was issued, 31 U.S.C. 3702(e) allowed time limit waivers only for claims up to $25,000 for either pay, allowances, and payment for unused accrued leave under title 37, U.S.C., or retired pay under title 10, U.S.C. Since 31 U.S.C. 3702(e) could be amended at any time to modify these restrictions, always consult the current provisions of that Section to determine which claims are included.

Appendix D to Part 282—Appeals

(a) *Who May Appeal.* A claimant may appeal if an initial determination denies all or part of a claim or finds that the claim was not received by the Component concerned within the time limit required by statute; however, the decision of the Secretary concerned not to request waiver of the time limit is not appealable except to the Secretary concerned, if the Secretary as a matter of discretion provides for such appeals.

(b) *When and Where to Submit an Appeal.* A claimant's appeal must be received by the Component concerned [1] within 30 days of the date of the initial determination. The Component may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. An appeal sent directly to the Defense Office of Hearings and Appeals (DOHA) [2] is not properly submitted.

(c) *Content of an Appeal.* No specific format is required; however, the appeal must be written and be signed by the claimant, the claimant's authorized agent, or the claimant's attorney. It also should:

(1) Provide the claimant's mailing address;

(2) Provide the claimant's telephone number;

(3) Provide the claimant's social security number or Employer Identification Number, if the claimant is a business firm;

(4) State the amount claimed on appeal, or that the appeal is from a finding of untimely receipt, whichever applies;

(5) Identify specific:

(i) Errors or omissions of material and relevant fact,

(ii) Legal considerations that were overlooked or misapplied, and

(iii) Findings that were arbitrary, capricious, or an abuse of discretion;

(6) Present evidence of the correct or additional facts alleged;

(7) Explain the reasons the findings should be reversed or modified;

(8) Have attached copies of documents referred to in the appeal; and

(9) Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the claimant or other persons in support of the appeal.

(d) *Component's Review.* The Component concerned must review a claimant's appeal, and affirm, modify, or reverse the initial determination.

(1) If the appeal concerns the denial of all or part of the claim and the Component grants the entire claim, or grants the claim to the extent requested in the appeal, the Component must notify the claimant in writing and explain the action the Component will take on the claim. This is a final action.

(2) If the appeal concerns the untimely receipt of the claim and the Component determines that the claim was received within the time limit required by statute, the Component must notify the claimant in writing and process the claim on the merits.

(3) In all other cases, the Component must forward the appeal to DOHA in accordance with paragraph (e) of this Appendix. If the appeal concerns an initial determination of untimely receipt, the Component should not investigate, or issue an initial determination concerning, the merits of the claim before forwarding the appeal. The Component must prepare a recommendation and administrative report (as explained in paragraph (f) of this Appendix). The Component must send a copy of the administrative report to the claimant, with a notice that the claimant may submit a rebuttal to the Component (as explained in paragraph (g) of this Appendix).

(e) *Submission of Appeal to DOHA.* No earlier than 31 days after the date of the administrative report, or the day after the claimant's rebuttal period, as extended, expires, the Component must send the entire record along with the recommendation and the administrative report required by paragraph (f) of this Appendix to: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, Virginia 22203–1995. The record sent to DOHA shall include specific identification of any major policy issue(s) and a statement as to whether the amount in controversy exceeds $100,000 either in the instant claim or in the aggregate for directly related claims. If the amount in controversy exceeds $100,000, a full description of the financial impact shall be provided.

(f) *Recommendation and Administrative Report.* The recommendation and administrative report required by paragraph (d) of this Appendix must include:

(1) The name of any Uniformed Service member or employee involved;

(2) The Component's file reference number;

(3) The claimant's social security number or Employer Identification Number, if the claimant is a business firm;

(4) The Component's recommendation (and the reasons for it) for the disposition of the claim;

(5) Relevant and material documents (such as correspondence, business records, and witness statements), as attachments; and

(6) Complete copies of regulations, instructions, memorandums of understanding, tariffs and/or tenders, solicitations, contracts, or rules cited by the claimant or the Component, if a copy has not been previously provided, or is not available readily via electronic means.

(g) *Claimant's Rebuttal.* A claimant may submit a written rebuttal, signed by the claimant or the claimant's agent or attorney, in response to the recommendation and administrative report. The rebuttal must be submitted to the Component within 30 days of the date of the recommendation and administrative report. The Component may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should include:

[1] Depending on the context, the term ''Component concerned'' or ''Component,'' as used in this Appendix, means the official designated by the head of the Component concerned or by Component regulations to perform the function or take the action indicated.

[2] Depending on the context, ''DOHA'' as used in this Enclosure, means the Director, Defense Office of Hearings and Appeals, or the DOHA Claims Appeals Board or other designee designated by the Director to perform the function or take the action indicated.

(1) An explanation of the points and reasons for disagreeing with the report;

(2) The Component's file reference number;

(3) Any documents referred to in the rebuttal; and

(4) Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the claimant or other persons in support of the rebuttal.

(h) *Action by the Component.* The Component must:

(1) Date stamp the claimant's rebuttal on the date it is received;

(2) Send the entire record to DOHA, but no earlier than 31 days after the date of the report, or the day after the claimant's rebuttal period, as extended, expires (as explained in paragraph (e) of this Appendix).

(i) *DOHA Appeal Decision.* Except as provided in paragraph (p) of this Appendix, DOHA must base its decision on the written record, including the recommendation and administrative report and any rebuttal by the claimant. DOHA shall coordinate its decision in advance with the Office of the General Counsel of the Department of Defense when the appeal decision affects:

(1) Major policy issues;

(2) A claim that is quasi-contractual in nature and arises from the activity of a DoD Component, but the claim was not settled under usual acquisition procedures; or

(3) When the amounts in controversy exceed $100,000, either for the instant claim or in the aggregate for directly related claims. The written decision must:

(i) Affirm, modify, reverse, or remand the Component's determination (and, if the issue is untimely receipt and there is a finding that the claim was timely received, may either consider and decide the claim on the merits or return the claim to the Component concerned for investigation and initial determination on the merits);

(ii) State the amount of the claim that is granted and the amount that is denied and/or state that the claim was or was not received within the statutory time limit, as appropriate; and

(iii) Explain the reasons for the decision.

(j) *Processing After the Appeal Decision.* After issuing an appeal decision, DOHA must:

(1) Send the claimant the decision and notify the claimant of:

(i) The appropriate Component action on the claim as a consequence of the decision, if it is or becomes a final action (as explained in paragraph (k) of this Appendix); and

(ii) The procedures under this enclosure to request reconsideration (as explained in paragraphs (l) through (n) of this Appendix), if the decision does not grant the claim to the extent requested, or does not contain a finding of timely receipt, as the case may be.

(2) Notify the Component concerned of the decision, and of the appropriate Component on the claim as a consequence of the decision.

(k) *Finality of a DOHA Appeal Decision.* An appeal decision that finds that the claim was timely received is a final action when issued. Otherwise, an appeal decision is a final action if DOHA does not receive a request for reconsideration within 30 days of the date of the appeal decision (plus any extension of up to 30 additional days granted by DOHA for good cause shown). NOTE: In the case of a DOHA appeal decision issued before [the effective date of this part] that denied all or part of the claim, a request for reconsideration by the General Counsel of the Department of Defense, or designee, may be submitted within 60 days of [the effective date of this part]. The General Counsel of the Department of Defense, or designee, shall consider such requests and affirm, modify, reverse, or remand the DOHA appeal decision. Requests for reconsideration by the General Counsel of the Department of Defense, or designee, received more than 60 days after [the effective date of this part] will not be accepted. Requests must be submitted to the address in paragraph (e) of this Appendix. The provisions of paragraph (n) of this Appendix apply.

(l) *Who May Request Reconsideration.* A claimant or the Component concerned, or both, may request reconsideration of a DOHA appeal decision.

(m) *When and Where to Submit a Request for Reconsideration.* DOHA must receive a request for reconsideration within 30 days of the date of the appeal decision.[3] DOHA may extend this period for up to an additional 30 days for good cause shown. No request for reconsideration may be accepted after this time has expired. A request for reconsideration must be sent to DOHA at the address in paragraph (e) of this Appendix.

(n) *Content of a Request for Reconsideration.* The requirements of paragraph (c) of this Appendix, concerning the contents of an appeal, apply to requests for reconsideration.

(o) *DOHA's Review of a Request for Reconsideration.*

(1) No earlier than 31 days after the date of the appeal decision, or the day after the last period for submitting a request, as extended, expires, DOHA must:

(i) Consider a request or requests for reconsideration;

(ii) Affirm, modify, reverse, or remand the appeal decision (and, if the issue is untimely receipt and there is a finding that the claim was timely received, may either consider and decide the claim on the merits or return the claim to the Component concerned for investigation and initial determination on the merits);

(iii) Prepare a response that explains the reasons for the finding.

(iv) Send the response to the claimant and the Component concerned and notify both of the appropriate action on the claim.

(2) The response is a final action. It is precedent in the consideration of all claims covered by this part unless otherwise stated in the document.

(p) *Consideration of Appeals and Requests for Reconsideration.* When considering an appeal or request for reconsideration, DOHA may:

(1) Consider additional evidence not included in the record as presented. The claimant and the Component concerned must be provided a copy of the additional evidence and must be given a reasonable time to comment.

(2) Take administrative notice of matters that are generally known or are capable of confirmation by resort to sources whose accuracy cannot reasonably be questioned.

(3) Remand a matter to the Component with instructions to provide additional information.

[3] With respect to appeal decisions issued before [the effective date of this part], the request for reconsideration by DOHA must be received within 30 days of [the effective date of this part].

Appendix E to Part 282—Requests for an Advance Decision Affecting a Claim

(a) *Who May Request an Advance Decision.* A disbursing or certifying official or the head of a Component may request an advance decision on a question involving:

(1) A payment the disbursing official or head of the Component will make; or

(2) A voucher presented to a certifying official for certification.

(b) *Who May Render an Advance Decision.* The following officials are authorized to render advance decision concerning the matters indicated:

(1) The Secretary of Defense for requests involving claims under:

(i) 31 U.S.C. 3702 for Uniformed Services members' pay, allowances, travel, transportation, retired pay, and survivor benefits, and by carriers for amounts collected from them for loss or damage to property they transported at Government expense.

(ii) 31 U.S.C. 3702 that are not described in paragraph (b)(1)(i) of this Appendix and that arise from the activity of a DoD Component, when there is not other settlement authority specifically provided by law.

(iii) 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, and 32 U.S.C. 714. (Appendix A to this part describes these claims.)

(2) The Director of the Office of Personnel Management for requests involving claims for civilian employees' compensation and leave.

(3) The Administrator of General Services for requests involving claims for civilian employees' travel, transportation, and relocation expenses.

(c) *Where to Submit a Request.* All requests described in paragraph (b)(1) of this Appendix and all other requests arising from the activity of a DoD Component (even if addressed to an official outside the Department of Defense) must be sent through the General Counsel of the Component concerned to: General Counsel, Department of Defense, 1600 Defense Pentagon, Washington, DC 20301–1600.

(d) *Content of a Request.* Requests for an advance decision must:

(1) Specifically request an advance decision pursuant to 31 U.S.C. 3529.

(2) Describe all the relevant facts.

(3) Explain the reasons (both factual and legal) the requester considers the proposed payment to be questionable.

(4) Have attached vouchers, if any, and copies of all other relevant documents relating to the proposed payment.

(5) Have attached a legal memorandum from the General Counsel of the Component concerned that discusses the legality of the proposed payment under the circumstances presented in the request.

(6) Comply with any other requirements established by an advance decision authority outside DoD.

(e) *Advance Decisions.* The General Counsel of the Department of Defense, or designee, must take action under paragraphs (e)(1), (e)(2), or (e)(3) of this Appendix, whichever applies.

(1) If the request is described in paragraph (b)(1) of this Appendix, the General Counsel of the Department of Defense, or designee, must review the request and issue an advance decision, unless the General Counsel of the Department of Defense, or designee, elects to proceed under paragraph (e)(3) of this Appendix.

(i) The General Counsel of the Department of Defense, or designee, must send the decision, through the General counsel of the Component concerned, to the requester, and must send a copy of the decision to the Director, Defense Office of Hearings and Appeals.

(ii) The decision is controlling in the case; the reliance of certifying and disbursing officials on it in their disposition of the case is evidence that those officials have exercised due diligence in the performance of their duties.

(iii) An advance decision is precedent in similar claims under this Instruction unless otherwise stated in the decision.

(2) If the request is not described in paragraph (b)(1) of this Appendix, the General Counsel of the Department of Defense, or designee, must review the request and either:

(i) forward the request to the appropriate advance decision authority and notify the requester of that action; or

(ii) Return the request, through the General Counsel of the Component concerned, to the requester, with a memorandum explaining that under existing legal authorities a request for an advance decision is not necessary. After considering the memorandum, the requester may resubmit the request, through the General Counsel of the component concerned, to the General Counsel of the Department of Defense, or designee. The General Counsel of the Department of Defense, or designee, must forward the request to the appropriate advance decision authority, and notify the requester of that action.

(3) If the request is described in paragraph (b)(1) of this Appendix, and the claim is for not more than $250, the General Counsel of the Department of Defense, or designee, may refer the request to the General Counsel of the Department of Defense, or designee, may refer the request to the General Counsel, Defense Finance and Accounting Service (DFAS). The General Counsel, DFAS, shall review the request and issue an advance decision.

(i) The General counsel, DFAS, must send the decision, through the General Counsel of the Component concerned, to the requester, and must send a copy of the decision to the General Counsel of the Department of Defense, or designee.

(ii) The decision is controlling in the case; the reliance of certifying and disbursing officials on it in their disposition of the case is evidence that those officials have exercised due diligence in the performance of their duties.

(iii) An advance decision issued by the General Counsel, DFAS, under this paragraph is not precedent in similar claims under this part.

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28727 Filed 11–13–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 283

RIN 0790–AG90

Waiver of Debts Resulting From Erroneous Payments of Pay and Allowances

AGENCY: Defense Office of Hearings and Appeals, Office of the General Counsel of the Department of Defense.

ACTION: Proposed rule.

SUMMARY: This rule proposes policy and assigns responsibilities for considering applications for the waiver of debts resulting from erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services and civilian Department of Defense (DoD) employees. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense. Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignment of the Comptroller General's former duties within the Department of Defense with little impact on the public.

DATES: Consideration will be given to all comments received on or before January 13, 2003.

ADDRESSES: Send comments to the Defense Office of Hearings and Appeals, ATTN: Claims Division, P.O. Box 3656, Arlington, VA 22203–1995.

FOR FURTHER INFORMATION CONTACT: Michael Hipple, 703–696–8510.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

The Director of the Defense Office of Hearings and Appeals has determined that this rule is not a significant rule because it does not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact on entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, ''Regulatory Flexibility Act''

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have a significant economic impact on a substantial number of small entities because this rule affects members of the Uniformed Services and Federal employees and provides procedures by which their claims against the United States will be adjudicated.

Public Law 96–511, ''Paperwork Reduction Act''

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not impose information collection requirements.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not involve a Federal Mandate 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 and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have federalism implications. This rule does not have substantial direct affects 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.

List of Subjects in 32 CFR part 283

Administrative practice and procedure, Armed forces, Wages.

Accordingly, 32 CFR part 283 is proposed to be added to subchapter M to read as follows:

PART 283—WAIVER OF DEBTS RESULTING FROM ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES

Sec.
283.1 Purpose.
283.2 Applicability.
283.3 Definitions.
283.4 Policy.
283.5 Responsibilities and functions.

Authority: 5 U.S.C. 5584; 10 U.S.C. 2774; 32 U.S.C. 716.

§ 283.1 Purpose.

This part establishes policy and assigns responsibilities for considering applications for the waiver of debts resulting from erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services and civilian Department of Defense (DoD) employees under 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584.

§ 283.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all organizational entities within the Department of Defense (hereafter referred to collectively as ''the DoD Components'').

(b) The Coast Guard, when it is not operating as a Service in the Navy, and the Commissioned Corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA), to the extent of the authority provided by law or delegated by the Director, Office of Management and Budget (hereafter referred to collectively as ''the non-DoD Components'').

§ 283.3 Definitions.

(a) *Debt.* An amount an individual owes the government as the result of erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services or civilian DoD employees.

(b) *Erroneous Payment.* A payment that is not in strict conformity with applicable laws or regulations.

(c) *Uniformed Services.* The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Commissioned Corps of the PHS and the NOAA.

(d) *Waiver Application.* A request that the United States relinquish its claim against an individual for a debt resulting from erroneous payments of pay or allowances (including travel and transportation allowances) under 10 U.S.C. 2774, 32 U.S.C. 716, or 5 U.S.C. 5584.

§ 283.4 Policy.

It is Department of Defense policy that:

(a) The officials designated in this Directive exercise waiver authority that, by statute or delegation, is vested in the Department of Defense.

(b) Waiver applications shall be processed in accordance with all pertinent statutes and regulations, and after consideration of other relevant authorities.

§ 283.5 Responsibilities and functions.

(a) The *Head of a Non-DoD Component,* concerning debts resulting from the Component's activity:

(1) Pursuant to 10 U.S.C. 2774, has the authority to deny or grant all or part of a waiver application, if the aggregate amount of the debt is $1,500 or less.

(2) If the aggregate amount of the debt is more than $1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (e)(3) of this section.

(b) The *Under Secretary of Defense (Comptroller),* concerning debts (except those described in paragraphs (c) and (d) of this section) resulting from DoD Component activity:

(1) Pursuant to enclosure 2 of DoD Directive 5118.3 [1], has the authority to deny or grant all or part of a waiver application, if the aggregate amount of the debt is $1,500 or less.

(2) If the aggregate amount of the debt is more than $1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (e)(3) of this section.

(c) The *Director, Department of Defense Dependents Schools,* concerning debts of civilian employees resulting from that Component's activity:

(1) Pursuant to enclosure 2 of DoD Directive 1342.6 [2], has the authority to deny or grant all or part of a waiver application, if the aggregate amount of the debt is $1,500 or less.

(2) If the aggregate amount of the debt is more than $1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (e)(3) of this section.

(d) The *Director, National Security Agency*, concerning debts resulting from that Component's activity:

(1) May deny or grant all or part of a waiver application, if the aggregate amount of the debt is $1,500 or less.

(2) If the aggregate amount of the debt is more than $1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (e)(3) of this section.

(e) The *General Counsel of the Department of Defense:*

(1) May deny or grant all or part of a waiver application, if the aggregate amount of a debt is more than $1,500.

(2) May decide appeals in accordance with procedures promulgated under paragraph (e)(3) of this section.

(3) Shall develop overall waiver policies; and promulgate procedures for considering waiver applications, including an initial determination process and a process to appeal an initial determination.

(f) The *Head of a DoD Component* shall:

(1) Consistent with procedures promulgated under paragraph (e)(3) of this section, establish procedures within

[1] Availability at http://www.dtic.mil/whs/directives.

[2] See footnote to § 283.5(b)(1).

the Component for the submission of waiver applications relating to debts resulting from the component's activity, which shall be referred to the appropriate official for consideration as set forth in paragraphs (b), (c), (d), or (e) of this section.

(2) Ensure compliance with this part and policies and procedures promulgated under paragraph (e)(3) of this section.

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 284

RIN 0790–AG91

Waiver Procedures for Debts Resulting From Erroneous Payments of Pay and Allowances

AGENCY: Defense Office of Hearings and Appeals, Office of the General Counsel of the Department of Defense.

ACTION: Proposed rule.

SUMMARY: This rule proposes policy and prescribes procedures for considering waiver applications. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense. Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignment of the Comptroller General's former duties within the Department of Defense with little impact on the public.

DATES: Consideration will be given to all comments received on or before January 13, 2003.

ADDRESSES: Send comments to the Defense Office of Hearings and Appeals, ATTN: Claims Division, P.O. Box 3656, Arlington, VA 22203–1995.

FOR FURTHER INFORMATION CONTACT: Michael Hipple, 703–696–8510.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

The Director of the Defense Office of Hearings and Appeals has determined that this rule is not a significant rule because it does not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact on entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have a significant economic impact on a substantial number of small entities because this rule affects members of the Uniformed Services and Federal employees and provides procedures by which their claims against the United States will be adjudicated.

Public Law 96–511, "Paperwork Reduction Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not impose information collection requirements.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not involve a Federal Mandate 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 and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have federalism implications. This rule does not have substantial direct affects 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.

List of Subjects in 32 CFR Part 284

Administrative practice and procedure, Armed Forces, Wages.

Accordingly, 32 CFR part 284 is proposed to be added to subchapter M to read as follows:

PART 284—WAIVER PROCEDURES FOR DEBTS RESULTING FROM ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES

Sec.

284.1 Purpose.
284.2 Applicability and scope.
284.3 Definitions.
284.4 Policy.
284.5 Responsibilities and functions.
284.6 Standards for waiver determinations.
284.7 Submitting a waiver application.
284.8 Processing a waiver application when the debt is $1500 or less.
284.9 Processing a waiver application when the debt is more than $1500.
284.10 Appeals.
284.11 Refund of repaid debts that are subsequently waived.
284.12 Publication.
Appendix A to Part 284—Standards for Waiver Determinations.
Appendix B to Part 284—Submitting a Waiver Application.
Appendix C to Part 284—Processing a Waiver Application When the Debt is $1500 or less.
Appendix D to Part 284—Processing a Waiver Application When the Debt is More Than $1500.
Appendix E to Part 284—Appeals.

Authority: 5 U.S.C. 552a; 2104, 2105, 5584; 10 U.S.C. 2774; 32 U.S.C. 716

§ 284.1 Purpose.

This part implements policy under 32 CFR part 283 and prescribes procedures for considering waiver applications under 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584.

§ 284.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the Department of Defense Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as "the DoD Components").

(b) The Coast Guard, when it is not operating as a Service in the Navy, and the Commissioned Corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA), to the extent of the authority provided by law or delegated by the Director, Office of Management and Budget (hereafter referred to collectively as ''the non-DoD Components'').

(c) This part applies to waiver applications relating to debts resulting from erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services and civilian DoD employees under 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584.

§ 284.3 Definitions.

(a) *Committee.* The person or persons invested, by order of a proper court, with the guardianship of a minor or incompetent person and/or the estate of a minor or incompetent person.

(b) *Component concerned.* The Component that notifies the individual of the debt that is the subject of a waiver application.

(c) *Debt.* An amount an individual owes the Government as the result of erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Service or civilian DoD employees.

(d) *Employee.* A person who is or was an officer or employee as defined in 5 U.S.C. 2104 and 2105.

(e) *Erroneous payment.* A payment that is not in strict conformity with applicable laws or regulations.

(f) *Final action.* A finding by the appropriate official under this Instruction concerning a waiver application from which there is no right to appeal or request reconsideration, or concerning which the time limit prescribed in this Instruction for submitting an appeal or request for reconsideration has expired without such a submission.

(g) *Member.* A member or former member of a Uniformed Service.

(h) *Uniformed Services.* The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Commissioned Corps of the PHS and the NOAA.

(i) *Waiver application.* A request that the United States relinquish its claim against an individual for a debt resulting from erroneous payments of pay or allowances (including travel and transportation allowances) under 10 U.S.C. 2774, 32 U.S.C. 716, or 5 U.S.C. 5584.

§ 284.4 Policy.

It is Department of Defense policy that waiver applications shall be processed in accordance with all pertinent statutes and regulations, and after consideration of other relevant authorities.

§ 284.5 Responsibilities and functions.

(a) The *Head of a Non-DoD Component,* or designee, concerning debts resulting from the Component's activity:

(1) May deny or grant all or part of a waiver application, if the aggregate amount of the debt is $1,500 or less.

(2) If the aggregate amount of the debt is more than $1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that part or all of the application be granted, in accordance with this part.

(3) Shall process waiver applications, when the aggregate amount of the debt is more than $1,500, and appeals in accordance with this part.

(4) Shall resolve a debt in accordance with the final action that results from the waiver application process provided for in this part.

(b) The *Director, Department of Defense Dependents Schools,* or designee, concerning debts of civilian employees resulting from that Component's activity; the *Director, National Security Agency,* or designee, concerning debts resulting from that Component's activity; and the *Under Secretary of Defense (Comptroller),* through the Defense Finance and Accounting Service, or other designee, concerning debts resulting from all other DoD Components' activities:

(1) May deny or grant all or part of a waiver application, if the aggregate amount of the debt is $1,500 or less.

(2) If the aggregate amount of the debt is more than $1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that part or all of the application be granted, in accordance with this part.

(3) Shall process waiver applications and appeals in accordance with this part.

(4) Shall resolve debts in accordance with the final action that results from the waiver application process provided for in this part.

(c) The *Director, Defense Office of Hearings and Appeals (DOHA),* or designee, under the General Counsel of the Department of Defense (as the Director, Defense Legal Services Agency):

(1) May deny or grant all or part of a waiver application, if the aggregate amount of the debt is more than $1,500.

(2) Shall consider an appeal of an initial determination and affirm, modify, reverse, or remand the initial determination, in accordance with this part and relevant DoD Office of General Counsel opinions.

(3) Shall process waiver applications and appeals in accordance with this part.

(d) The *General Counsel of the Department of Defense,* or designee, upon the request of the Director, DOHA, shall consult on, or render opinions concerning, questions of law or equity that arise in the course of the performance of the Director's responsibilities under paragraph (c) of this section.

(e) The *Head of a DoD Component,* or designee, shall process waiver applications in accordance with this part.

§ 284.6 Standards for waiver determinations.

The standards that must be applied in determining whether all or part of a waiver application should be granted or denied are at Appendix A to this part.

§ 284.7 Submitting a waiver application.

The procedures an applicant must follow to submit a waiver application are at Appendix B to this part.

§ 284.8 Processing a waiver application when the debt is $1500 or less.

The procedures a Component must follow in processing a waiver application when the debt is $1500 or less are at Appendix C to this part.

§ 284.9 Processing a waiver application when the debt is more than $1500.

The procedures a Component must follow in processing a waiver application when the debt is $1500 or more are at Appendix D to this part.

§ 284.10 Appeals.

The procedures for appealing initial determinations are at Appendix E to this part.

§ 284.11 Refund of repaid debts that are subsequently waived.

When a final action waives all or part of a debt that has been repaid, the waiver application shall be construed as an application for a refund and the Component concerned shall, to the extent of the waiver, refund the amount repaid.

§ 284.12 Publication.

In accordance with 5 U.S.C. 552a, the Director, DOHA, or designee, shall make

redacted copies of responses to requests for reconsideration available for public inspection and copying at DOHA's public reading room and on the worldwide web.

Appendix A to Part 284—Standards for Waiver Determinations

(a) Generally, persons who receive a payment erroneously from the government acquire no right to the money. They are bound in equity and good conscience to make restitution. In other words, if a benefit is bestowed by mistake, no matter how careless the act of the government may have been, the recipient must make restitution. In theory, restitution results in no loss to the recipient because the recipient had merely received something for nothing. However, 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584 provide authority to waive, under certain conditions, debts individuals owe the Government that are the result of erroneous payments of pay and allowances (including travel and transportation allowances). Waiver is not a matter of right, but is available to provide relief as a matter of equity, if the circumstances warrant.

(b) Debts may be waived only when collection would be against equity and good conscience and would not be in the best interests of the United States. There must be no indication that the erroneous payment was solely or partially the result of the fraud, misrepresentation, fault, or lack of good faith of the applicant.

(c) Administrative error or mistake on the part of the Government in making an erroneous payment is a factor for consideration in determining whether waiver is appropriate. However, the fact that an erroneous payment is solely the result of administrative error or mistake on the part of the Government is not, in and of itself, sufficient basis for granting a waiver.

(d) Waiver usually is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the Government, even if the Government fails to act after such notification.

(e) Waiver generally is not appropriate when a recipient of a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary.

(f) Waiver may be inappropriate in cases where a recipient questions a payment (which ultimately is determined to be erroneous) and is mistakenly advised by an appropriate official that the payment is proper, if under the circumstances the recipient knew or reasonably should have known that the advice was erroneous.

(g) The fact that collection of an erroneous payment from a recipient might result in financial hardship is not a factor for consideration in determining whether waiver is appropriate.

(h) Waiver determinations under these standards necessarily depend upon the facts in each case.

Appendix B to Part 284—Submitting a Waiver Application

(a) *Who May Apply For Waiver.* Any person (''applicant'') from whom collection is sought for a debt resulting from erroneous payments of pay or allowances (including travel and transportation allowances) may submit a waiver application. Additionally, an authorized official of the component concerned, or the Director, DOHA, or designee, may initiate a waiver application during the processing of a claim under 32 CFR part 281.

(b) *Where to Submit a Waiver Application.* An applicant must submit a waiver application to the Component concerned (that is, to the Component that notified the applicant of the indebtedness) in accordance with the guidance provided by that Component. A waiver application that is submitted somewhere other than to the Component concerned does not stop the running of the time limit in paragraph (f) of this Appendix. It is the applicant's responsibility to submit the waiver application properly.

(c) *Format of a Waiver Application.* A waiver application must be written and signed by the applicant (in the case of an application on behalf of a minor or incompetent person, there are additional requirements explained at paragraph (e) of this Appendix) or by the applicant's authorized agent or attorney (there are additional requirements explained at paragraph (d) of this Appendix) and should:

(1) Provide the applicant's mailing address;

(2) Provide the applicant's telephone number;

(3) Provide the applicant's social security number;

(4) State the amount for which waiver is requested;

(5) Explain why under the facts and circumstances waiver should be granted under the standards explained at Appendix A to this part;

(6) Have attached copies of documents referred to in the application; and

(7) Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application.

(d) *Waiver Application Submitted by Agent or Attorney.* In addition to the requirements in paragraph (c) of this Appendix, a waiver application submitted by the applicant's agent or attorney must include or have attached a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the applicant.

(e) *Waiver Application Submitted on Behalf of a Minor or Incompetent Person.* In addition to the requirements in paragraph (c) of this Appendix, if a guardian or committee has been appointed, a waiver application on behalf of a minor or incompetent person must include or have attached a certificate of the court showing the appointment and qualification of the guardian or committee. If a guardian or committee has not been appointed, a waiver application submitted on behalf of a minor or incompetent person must:

(1) State the applicant's relationship to the minor or incompetent person,

(2) Provide the name and address of the person having care and custody of the minor or incompetent person, and

(3) Include an affirmation that any moneys received will be applied to the use and benefit of the minor or incompetent person, and that the appointment of a guardian or committee is not contemplated.

(f) *When to Submit a Waiver Application.* An applicant must submit a waiver application so that it is received by the Component concerned within 3 years after the erroneous payment is discovered. The time limit is set by 10 U.S.C. 2774, 32 U.S.C. 716, or 5 U.S.C. 5584, whichever applies. The time limit may not be extended or waived. Although the issue of timeliness normally will be raised upon initial submission (as explained at Appendix C to this part, paragraph (b)), the issue may be raised at any point during the waiver application consideration process.

Appendix C to Part 294—Processing a Waiver Application When the Debt is $1500 or Less

(a) *Initial Component Processing.* Upon receipt of a waiver application, the Component concerned [1] must:

(1) Date stamp the application on the date received.

(2) Determine whether the application was received within 3 years after the discovery of the erroneous payment, and if the application was not timely, follow the procedures in paragraph (b) of this Appendix.

(3) Investigate the circumstances relating to the erroneous payment.

(4) Refer the application to the appropriate determining official (see paragraph (c) of this Appendix) for consideration and an initial determination.

(b) *Untimely Waiver Applications.* When the Component concerned finds that a waiver application was not received within 3 years after the erroneous payment was discovered, the Component must send the applicant a notice of untimely receipt.

(1) The notice must:

(i) Cite the applicable statute and explain the reasons for the finding of untimely receipt;

(ii) State that the application was not received within the statutory time limit and, therefore, may not be considered, unless that finding is reversed;

(iii) Explain that the applicant may submit a rebuttal to the finding of untimely receipt (as explained in paragraph (b)(2) of this Appendix); and

(iv) State that the statutory time limit may not be extended or waived.

(2) An applicant may submit a written rebuttal, signed by the applicant or the

[1] Depending on the context, the term ''Component concerned'' or ''Component,'' as used in this Appendix, means the official designated by the Head of the Component concerned or by Component regulations to perform the function or take the action indicated.

applicant's agent or attorney, to a notice of untimely receipt. The Component concerned must receive the rebuttal within 30 days of the date of the notice. The Component may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should:

(i) Explain the points of, and reasons for, disagreement with the notice;

(ii) Have attached any documents referred to in the rebuttal; and

(iii) Include or have attached statements (that are attested to be true and correct to the best of the individuals's knowledge and belief) by the applicant or other persons in support of the rebuttal.

(3) If the applicant does not submit a rebuttal within the time permitted, the notice of untimely receipt is a final action and the Component must return the application to the applicant with a notice that the finding is final and, therefore, the application may not be considered. If the applicant submits a timely rebuttal, the Component must consider the rebuttal and:

(i) If the Component finds that the application was received within the required time limit, the Component must reverse its finding of untimely receipt, notify the applicant in writing, and process the application on the merits; or

(ii) If the Component does not reverse the finding of untimely receipt, the Component must forward the record, including the application, notice of untimely receipt, and rebuttal, to the appropriate determining official (see paragraph (c)(1) of this Appendix) for an initial determination on the issue of untimely receipt. The Component need not investigate the merits of the application before forwarding the record.

(4) After making an initial determination on the issue of untimely receipt, the determining official must follow the procedures in paragraph (d) of this Appendix. In addition, if the determining official finds that the application was timely, the official may either:

(i) Return the application to the Component concerned for processing on the merits in accordance with this appendix, or

(ii) Consider the application and make an initial determination on the merits, in accordance with paragraph (c)(2) of this Appendix.

(c) *Initial Determinations.* The standards in Appendix A to this part must be applied when considering the merits of a waiver application. After making an initial determination, the determining official must follow the procedures at paragraph (d) of this Appendix.

(1) The officials listed in this paragraph, and referred to in this Appendix as determining officials, shall consider waiver applications and take the appropriate action described in paragraph (c)(2) of this Appendix with respect to the following debts:

(i) The head of a non-DoD Component, or designee, for debts resulting from that Component's activity.

(ii) The Director, Department of Defense Dependents Schools, or designee, for debts of civilian employees resulting from that Component's activity.

(iii) The Director, National Security Agency, or designee, for debts resulting from that Component's activity.

(iv) The Under Secretary of Defense (Comptroller), through the Defense Finance and Accounting Service, or other designee, for debts resulting from DoD Component activity not included in paragraphs (c)(1)(ii) and (c)(1)(iii) of this Appendix.

(2) The officials listed in paragraph (c)(1) of this Appendix may take the following actions with respect to waiver applications:

(i) Make an initial determination concerning whether or not a waiver application was received within 3 years after the discovery of the erroneous payment.

(ii) Make an initial determination denying a waiver application in its entirety.

(iii) Make an initial determination granting all or part of a waiver application.

(d) *Processing After an Initial Determination.* After making an initial determination, the determining official must:

(1) Notify the applicant. The notification must explain:

(i) The determination and the reasons for it;

(ii) The appropriate Component action to resolve the debt as a consequence of the determination, if it is or becomes a final action (the finality of an initial determination is explained at paragraph (e) of this Appendix); and

(iii) The appeal process (as explained in Appendix E to this part), if the determination does not grant the entire application or does not contain a finding of timely receipt, as the case may be.

(2) Notify the Component concerned, if the determining official is not an official of the Component concerned, when and if the determination is a final action. The notice must include an explanation of:

(i) The determination and the reasons for it, and

(ii) The appropriate Component action to resolve the debt as a consequence of the determination, if it is or becomes a final action (the finality of an initial determination is explained at paragraph (e) of this Appendix).

(e) *Finality of an Initial Determination.* An initial determination that grants the entire waiver application, or that finds that the application was timely received, as the case may be, is a final action when it is issued. Otherwise, an initial determination (including one of untimely receipt) is a final action if the determining official does not receive an appeal within 30 days of the date of the initial determination (plus any extension of up to 30 additional days granted by the determining official for good cause shown).

Appendix D to Part 284—Processing a Waiver Application When the Debt is More Than $1500

(a) *Initial Component Processing.* Upon receipt of a waiver application, the Component concerned [1] must:

(1) Date stamp the application on the date received.

(2) Determine whether the application was received within 3 years after the discovery of the erroneous payment, and if the application was not timely, follow the procedures in paragraph (b) of this Appendix.

(3) Investigate the circumstances relating to the erroneous payment.

(4) Refer the waiver application to the appropriate determining official (see Appendix C to this part, paragraph (c)), who after applying the standards in Appendix A to this part may either:

(i) Deny the waiver application in its entirety, if appropriate, and follow the procedures in Appendix C to this part, paragraph (d), or

(ii) Refer the application, with a recommendation that part or all of the application be granted, to DOHA [2] for consideration and an initial determination under paragraph (c) of this Appendix. The determining official must send the entire record and must prepare and submit a recommendation and administrative report (as explained in paragraphs (d) and (e) of this Appendix) with the application.

(b) *Untimely Waiver Applications.* When the Component concerned finds that a waiver application was not received with 3 years after the erroneous payment was discovered, the Component must send the application a notice of untimely receipt.

(1) The notice must:

(i) Cite the applicable statute and explain the reasons for the finding of untimely receipt;

(ii) State that the application was not received within the statutory time limit and, therefore, may not be considered, unless that finding is reversed;

(iii) Explain that the applicant may submit a rebuttal to the finding of untimely receipt (as explained in paragraph (b)(2) of this Appendix.); and

(iv) State that the statutory time limit may not be extended or waived.

(2) An applicant may submit a written rebuttal, signed by the applicant or the applicant's agent or attorney, to a notice of untimely receipt. The Component concerned must receive the rebuttal within 30 days of the date of the notice. The Component may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should:

(i) Explain the points of, and reasons for, disagreement with the notice;

(ii) Have attached any documents referred to in the rebuttal; and

(iii) Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the rebuttal.

(3) If the applicant does not submit a rebuttal within the time permitted, the notice of untimely receipt is a final action and the

[1] Depending on the context, the term ''Component concerned'' or ''Component,'' as used in this Appendix, means the official designated by the head of the Component concerned or by Component regulations to perform the function or take the action indicated.

[2] Depending on the context, ''DOHA,'' as used in this Appendix, means the Director, Defense Office of Hearings and Appeals, or the individual(s) designated by the Director to perform the function or take the action indicated.

Component must return the application to the applicant with a notice that the finding is final and, therefore, the application may not be considered. If the applicant submits a timely rebuttal, the Component must consider the rebuttal and:

(i) If the Component finds that the application was received within the required time limit, the Component must reverse its finding of untimely receipt, notify the applicant in writing, and process the application on the merits; or

(ii) If the Component does not reverse the finding of untimely receipt, the Component must forward the record, including the application, notice of untimely receipt, and rebuttal, to the appropriate official (see Appendix C to this part, paragraph (c)(1)) for an initial determination on the issue of untimely receipt. The Component need not investigate the merits of the application before forwarding the record.

(4) After making an initial determination on the issue of untimely receipt, the determining official must follow the procedures in Appendix C to this part, paragraph (d). In addition, if the determining official finds that the application was timely, the official may either:

(i) Return the application to the Component concerned from processing on the merits in accordance with this part, or

(ii) Make a recommendation to DOHA to grant all or part of the application as described in paragraphs (d) and (e) of this Appendix.

(c) *Initial Determinations.* The standards in Appendix A to this part must be applied when considering the merits of a waiver application. After making an initial determination, DOHA must follow the procedures at paragraph (f) of this Appendix. DOHA may take the following actions with respect to waiver applications referred under paragraph (a)(4)(ii) or (b)(4)(ii) of this Appendix:

(1) Make an initial determination denying a waiver application in its entirety.

(2) Make an initial determination granting all or part of a waiver application.

(d) *Recommendation to DOHA to Grant All or Part of an Application.* Referrals to DOHA must include the entire record along with the recommendation and administration report described in paragraph (e) of this Appendix. The record and the report must be sent to: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, VA 22203–1995.

(e) *Recommendation and Administrative Report.* The recommendation and administrative report required by paragraph (d) of this Appendix must describe the recommended action (and the reasons for it), and the following:

(1) The names and mailing addresses of each employee, member, or other person from whom collection is sought, or a statement that the person cannot reasonably be located;

(2) The aggregate amount of the debt, including an itemization showing the elements of the aggregate amount;

(3) The date the erroneous payment was discovered;

(4) The date the recipient was notified of the error, and a statement of the erroneous amounts paid before and after receipt of such notice;

(5) A summary of the facts and circumstances describing: how the erroneous payment occurred; the recipient's knowledge of the erroneous nature of the payment; and the steps the recipient took, if any, to bring the matter to the attention of the appropriate official; and the Component's response; if any;

(6) A finding of whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the applicant and the reasons for such a finding;

(7) Legible copies or the originals of supporting documents, such as leave and earnings statements, notifications of personnel actions, travel authorizations and vouchers, and military orders; and

(8) Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application.

(f) *Processing After an Initial Determination.* After making an initial determination, DOHA must:

(1) Notify the applicant. The notice must include an explanation of:

(i) The determination and the reasons for it;

(ii) The appropriate Component action to resolve the debt as a consequence of the determination, if it is or becomes a final action (the finality of an initial determination is explained at paragraph (g) of this Appendix); and

(iii) The appeal process (as explained in Appendix E to this part), if the determination does not grant the entire application or does not contain a finding of timely receipt, as the case may be.

(2) Notify the Component concerned when and if the determination is a final action. The notice must include an explanation of:

(i) The determination and the reasons for it, and

(ii) The appropriate Component action to resolve the debt as a consequence of the determination, if it is or becomes a final action (the finality of an initial determination is explained at paragraph (g) of this Appendix).

(g) *Finality of an Initial Determination.* An initial determination that grants the entire waiver application, or that finds that the application was timely received, as the case may be, is a final action when it is issued. Otherwise, an initial determination (including one of untimely receipt) is a final action if the determining official does not receive an appeal within 30 days of the date of the initial determination (plus any extension of up to 30 additional days granted by the determining official for good cause shown).

Appendix E to Part 284—Appeals

(a) *Who May Appeal.* An applicant may appeal if an initial determination denies all or part of a waiver application or finds that the application was not received by the Component concerned within the time limit required by statute.

(b) *When and Where to Submit an Appeal.*

(1) When the determining official is not in DOHA [1], they must receive an applicant's appeal within 30 days of the date of the initial determination. The determining official may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. The appeal will be processed under the procedures in paragraph (c) through paragraph (k) of this Appendix.

(2) When the determining official is in DOHA, DOHA must receive an applicant's appeal within 30 days of the date of the initial determination. DOHA may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. The appeal will be considered to be a request for reconsideration and will be processed under the procedures in paragraph (1) through paragraph (q) of this Appendix.

(c) *Content of an Appeal.* The appeal must be written and signed by the applicant, the applicant's authorized agent, or the applicant's attorney, and should:

(1) Provide the applicant's mailing address;

(2) Provide the applicant's telephone number;

(3) Provide the applicant's social security number;

(4) Identify specific:

(i) Errors or omissions of material and relevant fact,

(ii) Legal or equitable (under the standards in Appendix A to this part) considerations that were overlooked or misapplied, and

(iii) Findings that were arbitrary, capricious, or an abuse of discretion.

(5) Present evidence of the correct or additional facts alleged;

(6) Explain the reasons the findings should be reversed or modified;

(7) Have attached copies of documents referred to in the appeal; and

(8) Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the appeal.

(d) *Determining Officials' Review.* The determining official must review an applicant's appeal, and affirm, modify, or reverse the initial determination.

(1) If upon review of an appeal in a case involving a debt in the aggregate amount of $1500 or less, the determining official grants the entire waiver appeal or grants the application to the extent requested in the appeal, the determining official must notify the applicant and the Component concerned, if the determining official is not an official of the Component concerned. The notice must explain the appropriate action to resolve the debt. This is a final action.

(2) If the appeal concerns the untimely receipt of the waiver application and, upon the review of the appeal, the determining official finds that the application was received within the time limit required by statute, the official must notify the applicant in writing and take the appropriate action

[1] Depending on the context, ''DOHA,'' as used in this appendix, means the Director, Defense Office of Hearings and Appeals, or the individual(s) designated by the Director to perform the function or take the action indicated.

under paragraph (b)(4) of Appendix C to this part or paragraph (b)(4) of Appendix D to this part, as appropriate.

(3) In all other cases, the determining official must forward the appeal to DOHA in accordance with paragraph (e) of this Appendix. The determining official must prepare a recommendation and administrative report (as explained in paragraph (f) of this Appendix) and send a copy to the applicant, with a notice that the applicant may submit a rebuttal to the determining official (as explained in paragraph (g) of this Appendix).

(e) *Submission of Appeal to DOHA.* No earlier than 31 days after the date of the administrative report or the day after the applicant's rebuttal period, as extended, expires, the determining official must send the entire record along with the recommendation and administrative report described in paragraph (f) of this Appendix to: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, Virginia 22203–1995.

(f) *Recommendation and Administrative Report.* The recommendation and administrative report required by paragraph (d)(3) of this Appendix must describe the recommended action (and the reasons for it) and, unless included in a report in the record that was prepared in the initial determination process as follows:

(1) The names and mailing addresses of each employee, member, or other person from whom collection is sought, or a statement that the person cannot reasonably be located;

(2) The aggregate amount of the debt, including an itemization showing the elements of the aggregate amount;

(3) The date the erroneous payment was discovered;

(4) The date the recipient was notified of the error, and a statement of the erroneous amounts paid before and after receipt of such notice;

(5) A summary of the facts and circumstances describing: how the erroneous payment occurred; the recipient's knowledge of the erroneous nature of the payment; and the steps the recipient took, if any, to bring the matter to the attention of the appropriate official, and the Component's response, if any;

(6) A finding of whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the applicant and the reasons for such a finding;

(7) Legible copies or the originals of supporting documents, such as leave and earnings statements, notifications of personnel actions, travel authorizations and vouchers; and military orders; and

(8) Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application;

(g) *Applicant's Rebuttal.* An applicant may submit a written rebuttal, signed by the applicant or the applicant's agent or attorney, to the recommendation and administrative report. The rebuttal must be submitted to the determining official within 30 days of the date of the recommendation and administrative report. The determining official may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should include:

(1) An explanation of the points and reasons for disagreeing with the report;

(2) The file reference number;

(3) Any documents referred to in the rebuttal; and

(4) Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the rebuttal.

(h) *Action by the Determining Official on Appeal.* The determining official must:

(1) Date stamp the applicant's rebuttal on the date it is received.

(2) Send the entire record to DOHA, but no earlier than 31 days after the date of the report, or the day after the applicant's rebuttal period, as extended, expires (as explained in paragraph (g) of this Appendix).

(i) *DOHA Appeal Decision.* Except as provided in paragraph (q) of this Appendix, DOHA must base its decision on the written record, including the recommendation and administrative report and any rebuttal by the applicant. The written decision must:

(1) Affirm, modify, reverse, or remand the initial determination and decide the application on the merits or return the application to the Component concerned for investigation and processing for an initial determination on the merits in accordance with Appendix C to this part;

(2) State the amount of the waiver application that is granted and the amount that is denied and/or state that the application was or was not received within the statutory time limit, as appropriate; and

(3) Explain the reasons for the decision.

(j) *Processing After the Appeal Decision.* After issuing an appeal decision, DOHA must:

(1) Send the applicant the decision and notify the applicant of:

(i) The appropriate Component action to resolve the debt as a consequence of the decision, if it is or becomes a final action (as explained in paragraph (k) of this Appendix); and

(ii) The procedures under this Appendix to request reconsideration (as explained in paragraphs (l) through (n) of this Appendix), if the decision does not grant the waiver application to the extent requested, or does not contain a finding of timely receipt, as the case may be.

(2) Notify Component concerned of the decision, and the appropriate Component action to resolve the debt as a consequence of the decision.

(k) *Finality of a DOHA Appeal Decision.* An appeal decision that grants the waiver application to the extent requested on appeal, or that finds that the application was timely received, as the case may be, is a final action when issued. Otherwise, an appeal decision is a final action if DOHA does not receive a request for reconsideration within 30 days of the date of the appeal decision (plus any extension of up to 30 additional days granted by DOHA for good cause shown).

Note: In the case of a DOHA appeal decision issued before [the effective date of this part] that denied all or part of the waiver application, a request for reconsideration by the General Counsel of the Department of Defense, or designee, may be submitted within 60 days of [the effective date of this part]. The General Counsel of the Department of Defense, or designee, shall consider such requests and affirm, modify, reverse, or remand the DOHA appeal decision. Requests for reconsideration by the General Counsel of the Department of Defense, or designee, received more than 60 days after [the effective date of this part] will not be accepted. Requests must be submitted to the address in paragraph (e) of this Appendix. The provisions of paragraph (n) of this Appendix apply.

(l) *Who May Request Reconsideration.* An applicant may request reconsideration of a DOHA appeal decision.

(m) *When and Where to Submit a Request for Reconsideration.* DOHA must receive a request for reconsideration within 30 days of the date of the appeal decision.[2] DOHA may extend this period for up to an additional 30 days for good cause down. No request for reconsideration may be accepted after this time has expired. A request for reconsideration must be sent to DOHA at the address in paragraph (e) of this Appendix.

(n) *Content of a Request for Reconsideration.* The requirements of paragraph (c) of this Appendix concerning the content of an appeal, apply to a request for reconsideration.

(o) *DOHA's Review of a Request for Reconsideration.* No earlier than 31 days after the date of the appeal decision, or the day after the last period for submitting a request, as extended, expires, DOHA must:

(1) Consider a request for reconsideration;

(2) Affirm, modify, or reverse the appeal decision;

(3) Prepare a response that explains the reasons for the finding;

(4) Send the response to the applicant and the Component concerned and notify both of the appropriate action on the debt.

(p) The response is a final action. It is precedent in the consideration of waiver applications covered by this part unless otherwise stated in the document.

(q) *Consideration of Appeals and Requests for Reconsideration.* When considering an appeal or request for reconsideration, DOHA may:

(1) Consider additional evidence not included in the record as presented. The applicant must be provided a copy of the additional evidence and must be given a reasonable time to comment.

(2) Take administrative notice of matters that are generally known or are capable of confirmation by resort to sources whose accuracy cannot reasonably be questioned.

(3) Remand a matter to the Component with instructions to provide additional information.

[2] With respect to appeal decisions issued before [the effective date of this part], the request for reconsideration by DOHA must be received within 30 days of [the effective date of this part].

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liasion Officer, Department of Defense.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA134–138–4193b; FRL–7391–7]

Approval and Promulgation of Air Quality Implementation Plans; PA; Revisions to Allegheny County Articles XX and XXI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania on behalf of Allegheny County. EPA is proposing approval of: A recodification of Allegheny County's air pollution control regulations, from articles XX to XXI; revisions of Allegheny County's article XXI regulations pertaining to general administrative provisions, emissions standards, emergency episode plans, test methods, and the permitting provisions for new and modified sources; approval of new and revised definitions associated with the article XXI provisions; and removal from the SIP of outdated and outmoded article XX provisions which are no longer codified in article XXI. In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. 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.

DATES: Comments must be received in writing by December 16, 2002.

ADDRESSES: Written comments should be addressed to, Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action for Pennsyvania, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: September 27, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–28697 Filed 11–13–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA Docket ID No. OW–2002–0022; FRL–7408–3]

Water Quality Standards for Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comments.

SUMMARY: EPA is proposing water quality standards that establish an antidegradation policy and implementation methods for high quality waters in the Commonwealth of Kentucky. On August 7, 1997, EPA disapproved the Commonwealth's antidegradation provisions for ''high quality waters'' because the criteria for designating such waters were not sufficiently inclusive. The Commonwealth subsequently revised portions of the antidegradation provisions. However, the replacement standards did not address all of the disapproved items. The Clean Water Act requires the Administrator to propose and promulgate revised water quality standards if she determines that a standard adopted by a State is inconsistent with the Act.

DATES: EPA will consider written comments on the proposal received by March 14, 2003.

EPA will hold a public hearing on this proposed rule on January 23, 2003, from 2 pm to 5 pm and from 7 pm to 10 pm. If you need special accommodations at this meeting, including wheelchair access or sign language interpreter, you should contact Fritz Wagener at 404/562–9267 at least 15 business days prior to the meeting so that we can make appropriate arrangements.

ADDRESSES: Send your comments by mail to: Docket Manager, Attention Docket ID No. OW–2002–0022, Water Quality Standards for Kentucky, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104. You may also submit comments electronically, or through hand delivery or courier. Follow the detailed instructions provided in I.C. The hearing will be conducted at the Capital Plaza Convention Complex, 405 Mero Street, Frankfort, Kentucky.

Comments may be submitted electronically, by mail, or through hand delivery or courier. Follow the detailed instructions provided in **SUPPLEMENTARY INFORMATION** Part I. General Information.

FOR FURTHER INFORMATION CONTACT: Fritz Wagener, Water Quality Standards

Coordinator, Water Management Division, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104, 404/562–9267, *wagener.fritz@epa.gov.*

SUPPLEMENTARY INFORMATION: This section is organized as follows:

I. General Information
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C. How and to Whom Do I Submit Comments?
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I. General Information

A. What Entities May Be Affected by This Action?

Citizens concerned with water quality in Kentucky may be interested in this proposed rulemaking. Today's proposal, if made final, will establish an antidegradation policy for high quality waters in the Commonwealth of Kentucky (hereafter, ''the Commonwealth'' or ''Kentucky'') and methods for implementing the policy. High quality waters are waters where the quality of the water is better than the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. Waters that currently are regulated by Kentucky under the Commonwealth's exceptional waters and outstanding national resource waters provisions of its regulations would not be subject to this rule because they are already protected under Kentucky's antidegradation program.

Entities potentially indirectly affected by this action are National Pollutant Discharge Elimination System (NPDES) permit applicants in Kentucky. Kentucky is authorized to issue these permits and does so through the Kentucky Pollutant Discharge Elimination System (KPDES) program, CWA section 404 dredge and fill permits, and other activities requiring a CWA 401 certification. The KPDES permit applicants (*e.g.*, industries or municipalities) which request authorization from the Commonwealth of Kentucky for a new or an increased discharge to high quality waters in Kentucky are the entities potentially indirectly affected by this action. Categories and entities that may be indirectly affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to Kentucky high quality waters as defined in § 131.39 of this proposed rule.
Municipalities	Publicly-owned treatment works discharging pollutants to Kentucky high quality waters as defined in § 131.39 of this proposed rule.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding KPDES regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine today's proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OW–2002–0022. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing under *Water Quality Standards for Kentucky* at Water Management Division, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104. This Docket Facility is open from 9 am to 3:30 pm, Monday through Friday, excluding legal holidays. The Docket telephone number is 404–562–9267. A reasonable fee will be charged for copies.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in OW–2002–0022, the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket identified in I.B.1.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket, visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery or courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. The Agency will make every attempt to consider them, however.

1. Electronically. If you submit an electronic comment as prescribed in this section, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OW–2002–0022. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *wagener.fritz@epa.gov*, Attention Docket ID No. OW–2002–0022, Water Quality Standards for Kentucky. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address in I.C.1. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Docket Manager, Attention Docket ID No. OW–2002–0022, Water Quality Standards for Kentucky, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104.

3. *By Hand Delivery or Courier.* Deliver your comments to: Docket Manager, Attention Docket ID No. OW–2002–0022, Water Quality Standards for Kentucky, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104. Such deliveries are only accepted during the Docket's normal hours of operation as identified in I.B.1.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Are the Applicable Federal Statutory and Regulatory Requirements?

Section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA) requires States and authorized Tribes to adopt water quality standards for waters of the United States within their applicable jurisdictions. Such water quality standards must include, at a minimum: (1) Designated uses for all water bodies within their jurisdictions, (2) water quality criteria necessary to protect the most sensitive of the uses, and (3) antidegradation provisions consistent with the regulations at 40 CFR 131.12.

Antidegradation is an important tool for States and authorized Tribes to use in meeting the CWA's requirement that water quality standards protect the public health or welfare, enhance the quality of water and meet the objective of the CWA to restore and maintain the chemical, physical and biological integrity of the nation's waters.

EPA's regulation at 40 CFR 131.12 requires that States and authorized Tribes adopt antidegradation policies and identify implementation methods to provide three levels of water quality protection. The first level of protection at 40 CFR 131.12(a)(1) requires the maintenance and protection of existing instream water uses and the level of water quality necessary to protect those existing uses. Protection of existing uses is the *floor* of water quality protection afforded to all waters of the United States. Existing uses are ''. . . those uses actually attained in the water body on or after November 28, 1975, whether

or not they are included in the water quality standards.'' (40 CFR 131.3(e))

The second level of protection is for high quality waters. High quality waters are defined in 40 CFR 131.12(a)(2) as waters where the quality of the waters is better than the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. This water quality is to be maintained and protected unless the State or authorized Tribe finds, after public participation and intergovernmental review, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing lower water quality, the State or authorized Tribe must assure water quality adequate to protect existing uses. Further, the State or authorized Tribe must ensure that all applicable statutory and regulatory requirements are achieved for all new and existing point sources and all cost-effective and reasonable best management practices are achieved for nonpoint source control.

Finally, the third and highest level of antidegradation protection is for outstanding national resource waters (ONRWs). If a State or authorized Tribe determines that the characteristics of a water body constitute an outstanding national resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, and designates a water body as such, then those characteristics must be maintained and protected (*see* 40 CFR 131.12(a)(3)).

B. What Are Kentucky's Antidegradation Provisions?

The Commonwealth's antidegradation regulations are contained in 401 Kentucky Administrative Register (KAR) 5:029 section 1 and KAR 5:030. For the purposes of implementing antidegradation requirements, Kentucky places surface waters in one of three categories: ONRWs, exceptional waters, and use protected waters. Following is a brief discussion of these categories:

ONRWs. The two criteria that must be met in order for the Commonwealth to designate a water body as an ONRW are included in 401 KAR 5:030, section 1.(1)(a), as follows:

1. Surface water that meets, at a minimum, the requirements for an outstanding state resource water classification found in 401 KAR 5:031 section 7; and

2. Surface water that demonstrates to be of national ecological or recreational significance.

The provisions of 401 KAR 5:031 section 7 require the designation as an outstanding state resource water for the following: Waters designated under the Kentucky Wild Rivers Act; waters designated under the Federal Wild and Scenic Rivers Act; waters identified under the Kentucky Nature Preserves Act that are contained within a formally dedicated nature preserve or are published in the registry of natural areas; and waters that support federally recognized endangered or threatened species under the Endangered Species Act. Other waters of the Commonwealth given consideration for an outstanding state resource water designation include: Waters which flow through or are bounded by State or Federal forest land; waters that are of exceptional aesthetic or ecological value; waters that are a part of a unique geological or historical area recognized by State or Federal designation; or a water which is a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and exhibits two of the following characteristics: (1) The water body supports a diverse or unique native aquatic flora or fauna; (2) the water body possesses physical or chemical characteristics that provide an unusual and uncommon aquatic habitat; or (3) the water body provides a unique aquatic environment within a physiographic region. (*See* 401 KAR 5:031 section 7).

Kentucky requires that water quality in ONRWs be maintained and protected. Temporary or short-term changes in water quality may be allowed if the changes will not have a demonstrable impact on the ability of the ONRW to support its designation. Kentucky's provisions for ONRWs are consistent with EPA's requirements at 40 CFR 131.12(a)(3).

Exceptional Waters. Paragraph (2) of 401 KAR 5:029 section 1 contains the portion of Kentucky's antidegradation policy which addresses the requirements for waters with quality that is better than the levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water. Kentucky defines exceptional waters in 401 KAR 5:030, section 1.(1)(b), using the following criteria:

1. Surface water designated as a Kentucky Wild River, unless it is categorized as an outstanding national resource water;

2. Outstanding state resource water that does not support a federally threatened or endangered aquatic species;

3. Surface water that fully supports all applicable designated uses and contains:

a. A fish community that is rated ''excellent'' by the use of the Index of Biotic Integrity, included in ''Methods for Assessing Biological Integrity of Surface Waters,'' incorporated by reference in section 4 of this administrative regulation; or

b. A macroinvertebrate community that is rated ''excellent'' by the Macroinvertebrate Bioassessment Index, included in ''A Macroinvertebrate Bioassessment Index for Streams of the Interior Plateau Ecoregion in Kentucky,'' incorporated by reference in section 4 of this administrative regulation; and

4. Water in Kentucky's Natural Resources and Environmental Protection Cabinet's reference reach network.

Water bodies are included in Kentucky's Reference Reach Network after an extensive evaluation of water body and watershed characteristics. After initial and secondary screening based on factors such as riparian zone condition, surrounding land use, extent of hydrologic modification, habitat, and other physical characteristics, waters are selected for inclusion in the Reference Reach Network based on a review of the following: (1) Condition of the riparian zone, (2) bank stability, (3) percentage of fine sediment and algal mats in the substrate, (4) amount of suspended solids during normal weather conditions, (5) stable bottom habitat, (6) amount of solid waste in the water body and its banks, (7) land use, and (8) accessibility.

Kentucky's process for implementing antidegradation provisions for exceptional waters involves the application of specified effluent limitations for new or expanded discharges. For example, domestic discharges are limited to discharge at levels of 10 mg/l for five-day carbonaceous biochemical oxygen demand, 2 mg/l of ammonia nitrogen, 10 mg/l total suspended solids, and 7 mg/l dissolved oxygen, among others. Also, certain discharges are restricted to no more than one-half of the limitation that would have been permitted for use protected waters for other parameters. These limitations apply to new or expanded discharges, unless a permit applicant can meet the following requirements:

* * * the applicant will demonstrate to the satisfaction of the cabinet that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located following the guidelines in ''Interim Economic Guidance for Water Quality Standards Workbook,'' EPA, March 1995 incorporated by reference in section 4 of this administrative regulation and include an alternative analysis that shall consider the following:

1. Discharge to other treatment facilities;

2. Use of other discharge locations;

3. Water reuse or recycle;

4. Process and treatment alternatives; and

5. On-site or subsurface disposal.

KPDES permit renewals with discharges to exceptional waters that result in less than a 20 percent increase in pollutant loading are exempt from these antidegradation requirements. (*See* 401 KAR 5:030 section 1.(3)(a)6.)

Use protected waters. The Commonwealth's use protected category includes a mix of waters. Use protected waters are defined in 401 KAR 5:030, section 1.(1)(c) as including any ''water not listed in section 3 of this administrative regulation as (an) outstanding national resource water or exceptional water.''

Kentucky's regulations at 401 KAR 5:030 section 1.(4)(a) provide that: ''All existing uses shall be protected and the level of water quality necessary to protect the uses shall be assured in the use protected water.'' A use protected water is also protected through the application of all applicable water quality criteria necessary to support its designated uses. In a letter dated May 24, 2001, from Mr. Jack A. Wilson, Director, Kentucky Division of Water, to Ms. Beverly Banister, Director, EPA Region 4 Water Management Division, the Commonwealth gave the following explanation of this category:

> * * * the use-protected category included all waters that were not ONRWs or exceptional, *i.e.*, waters that met uses and were impaired. It is more clear and straightforward to separate this use protected category into two categories: high quality water[s] (Tier 2) and impaired [waters] (Tier 1).

Based on this explanation, waters designated for antidegradation purposes as use protected waters include: (1) Waters with quality that is better than the levels necessary to support propagation of fish, shellfish, wildlife, and recreation in and on the water (in addition to waters meeting these criteria already designated as exceptional waters), (2) waters that just meet their designated aquatic life and recreation uses and (3) impaired waters which are not attaining their designated uses.

C. Why Is EPA Proposing Federal Antidegradation Provisions for the Commonwealth of Kentucky?

EPA is proposing Federal water quality standards for high quality waters in Kentucky because EPA disapproved the Commonwealth's antidegradation provisions that were intended to establish requirements for high quality waters commensurate with those required by EPA's Water Quality Standards regulation at 40 CFR 131.12(a)(2). The Commonwealth's provisions only apply to a limited subset of high quality waters rather than to all waters whose quality is better than the levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water.

The following table shows EPA's estimate of the number of stream miles and water bodies in each of Kentucky's antidegradation categories.

Category of waters	Stream miles	Water bodies	% of total stream miles
Total	49,100.0	.....	100
Outstanding national resource waters	29.6	3	0.06
Exceptional waters	665.0	75	1.35
Use protected, but impaired	3,945.0	700	8.0
Use protected, and not determined to be impaired	44,460.0	(1)	90.6

[1] All others.

These estimates are based on EPA's analysis of waters currently listed in KAR 5:030 section 3, and information provided in the May 24, 2001, letter from the Kentucky Division of Water to EPA. The mileage reported as use protected and not determined to be impaired was estimated using the length of waters classified as *Partially Supporting* or *Not Supporting,* for aquatic life and swimming uses in the ''1998 Kentucky Report to Congress on Water Quality,'' (*i.e.*, Kentucky's 305(b) Report) (Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water, January 1999). EPA generated the stream mile estimates above for those use protected waters determined not to be impaired by subtracting the sum of the waters designated as ONRWs, waters designated as exceptional waters, and use protected waters, but impaired, from the total mileage reported in the Commonwealth.

Kentucky's approach limits the use of the special protections for high quality waters to the Commonwealth's exceptional waters category which comprise just 1.35 percent of all its waters. However, Kentucky's 1998 305(b) Report shows that approximately 67 percent of the Commonwealth's unassessed waters are candidates for the high quality water protections. This pattern is confirmed by recent intensive watershed sampling in the Kentucky, Salt and Licking River basins, as well as data from random statewide aquatic life biological sample in wadeable streams conducted by the Kentucky Division of Water over the last two years. This recent sampling shows that approximately 60 percent of the sites fully support their designated uses.

The above information and analysis show that the eligibility criteria adopted by the Commonwealth for the exceptional waters category results in only a relatively small percentage of surface waters receiving the protection of the high quality water provisions at 401 KAR 5:029 section 1.(2). Therefore, EPA determined that Kentucky's exceptional waters category does not include other waters whose quality exceed levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, as required in 40 CFR 131.12(a)(2). In addition, Kentucky's implementation procedures for the use protected category (401 KAR 5:030 section 1.(4)) do not require that the Commonwealth evaluate the necessity of lowering water quality, even though this category does include high quality waters.

In a letter of August 7, 1997, from John H. Hankinson, Jr., EPA Region 4 Regional Administrator, to General James E. Bickford, Secretary, Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet, EPA Region 4 disapproved the Commonwealth's eligibility criteria in 401 KAR 5:030 section 1.(3) for designating waters to be given high quality water protection, and specified the changes needed for EPA to approve a revised water quality standard. In an October 9, 1997, letter from General James E. Bickford, Secretary, Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet to John H. Hankinson, Jr., EPA Region 4 Regional

Administrator, responding to EPA's disapproval, Kentucky stated its intention to expand the universe of high quality waters receiving added protection from the effects of point source discharges regulated under the KPDES program. Kentucky also indicated that the revisions would be part of its upcoming triennial review of water quality standards.

Kentucky began its water quality standards triennial review in October 1998 with a public notice and mailing to interested parties of its intent to update uses, revise numeric criteria, strengthen mixing zone language, and to respond to EPA's 1997 antidegradation disapproval. The February 1999 ''Administrative Register of Kentucky'' included a notice of intent to revise the water quality standards regulation and to hold a public hearing on February 25, 1999. After adoption of revisions to Kentucky water quality standards on December 8, 1999, Kentucky submitted the results of its triennial review to EPA on December 15, 1999. However, the revisions did not sufficiently broaden the criteria to increase the number of eligible waters for the exceptional waters category, consistent with EPA's regulation at 40 CFR 131.12(a)(2). Therefore on August 30, 2000, EPA Region 4 notified the Commonwealth that the high quality waters provisions of Kentucky's water quality standards remained disapproved.

In a letter of May 24, 2001, from Mr. Jack A. Wilson, Director, Division of Water, to Ms. Beverly Banister, Director, Water Management Division, Kentucky clarified that the exceptional waters category is intended to provide a higher level of protection than the level for other high quality waters. Several States and authorized Tribes have created an additional category of water between high quality waters and ONRWs in their antidegradation policy. Kentucky's exceptional waters category generally includes more stringent controls than those required for high quality waters, but allows more flexibility to make adjustments in criteria and in permitting decisions than would normally be allowed if the water body were designated as an ONRW. EPA believes such a category is consistent with the intent and spirit of the antidegradation policy when supplementing the high quality water and the ONRW categories.

The Commonwealth has an active program to identify candidates for the exceptional waters category. The Kentucky Division of Water has identified 133 segments, which cover approximately 567 stream miles, meeting the criteria for inclusion in the exceptional waters category since the previous triennial review completed in 1999. These waters have been found to meet the exceptional waters criteria based on ambient sampling in the Salt, Licking, Upper and Lower Cumberland, Tennessee, and Mississippi river basins. Many of these segments have been included in Kentucky's Reference Reach Network, and others have been found to contain either fish or macroinvertebrate communities rated as excellent using the Commonwealth's assessment methodologies for evaluation of biological integrity. However, as discussed in this section, Kentucky has no separate, readily identified high quality waters category commensurate with 40 CFR 131.12(a)(2).

III. Today's Proposed Rule

Today's **Federal Register** notice proposes a high quality waters antidegradation policy, a definition of waters to which the policy would apply and methods for implementing the policy. Consistent with section 303(c)(4) of the CWA, if during the Federal rulemaking process, Kentucky adopts revisions to its antidegradation provisions which are approved by EPA Region 4, the proposal would not be made final. In addition, if Kentucky adopts revisions to its antidegradation provisions which are approved following publication of a final Federal rule, EPA would withdraw its rule.

EPA is providing an extended comment period in response to a request from members of the public. While EPA has a statutory obligation to take final action on the proposal in a timely manner, we also want to ensure that interested parties have an adequate opportunity to prepare and submit comments and to provide Kentucky with an opportunity to adopt its own revisions to the Commonwealth's antidegradation provisions.

A. What Is the Proposed Policy To Protect Kentucky's High Quality Waters?

EPA is proposing that the antidegradation policy in 40 CFR 131.12(a)(2) apply to high quality waters in the Commonwealth of Kentucky. The Agency notes that the language of the proposed policy is somewhat different from 40 CFR 131.12(a)(2). Those differences result only from our efforts to make the policy easier to understand, and do not suggest any substantive difference in the Agency's interpretation of 40 CFR 131.12(a)(2). The proposed high quality waters antidegradation policy in section 131.39(a) reads as follows:

(1) Where the quality of the water is better than levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, the Commonwealth of Kentucky (hereafter, Commonwealth or Kentucky) shall maintain and protect that quality unless Kentucky finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the water is located.

(2) Before allowing lower water quality, the Commonwealth shall ensure that all measures to fully protect existing uses shall be achieved.

(3) Before allowing lower water quality, the Commonwealth shall ensure that the most protective statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control shall be achieved.

Today's proposal is substantially the same as Kentucky's current antidegradation policy in 401 KAR 5:029 section 1.(2), with the critical exception that EPA's proposal does not include the sentence: ''For point source discharges, water quality shall be maintained and protected according to the procedures specified in 401 KAR 5:030, section 1.(3).''

This sentence in Kentucky's policy limits the number of waters protected to those identified as exceptional waters. As discussed in section II.C., EPA disapproved the Commonwealth's high quality antidegradation provisions because the eligibility criteria were not sufficiently inclusive.

EPA recognizes that the Commonwealth has adopted an antidegradation policy consistent with the provisions in 40 CFR 131.12(a)(2) for some of its high quality waters. EPA is proposing the policy for high quality waters in Kentucky, except for ONRWs and exceptional waters, in order to include high quality waters not currently recognized as such in Kentucky's water quality standards. This would allow the application of the antidegradation policy to certain waters now in the Commonwealth's use protected waters category.

EPA's proposed high quality waters policy in conjunction with the Commonwealth's existing antidegradation policy provides that before authorizing lower water quality in a high quality water, the Commonwealth shall ensure the implementation of all measures to fully protect existing uses. EPA interprets this provision to mean that Kentucky will evaluate the cumulative effects from previous loading increases to ensure that water quality will continue to protect existing uses. As stated previously, this level of protection is the

''floor'' of water quality protection afforded to all waters.

The proposed antidegradation policy for high quality waters further provides that before lowering the water quality in high quality waters, Kentucky shall ensure that the most protective statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control shall be achieved.

EPA does not interpret the nonpoint source provision to require the establishment of nonpoint source control requirements where none exist. Rather, where nonpoint source control programs or regulatory requirements have been established under State authorities, these requirements are to be implemented prior to lowering the quality of high quality waters (see Memorandum from Tudor T. Davies, Director, EPA Office of Science and Technology to EPA Water Management Division Directors, Regions 1–10, Subject: Interpretation of Federal Antidegradation Regulatory Requirement, February 22, 1994).

B. How Will Kentucky Identify a High Quality Water?

Today's proposal, if finalized, defines high quality waters as any surface water other than those currently designated by the Commonwealth as exceptional waters or ONRWs, where the quality of the water is better than the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. EPA's current regulation provides a great deal of flexibility to States and authorized Tribes in making those decisions.

Identifying high quality waters is key for antidegradation to be effective. In general, States and authorized Tribes identify high quality waters using one of two approaches: (1) The parameter-by-parameter or pollutant-by-pollutant approach or (2) the designational or water body-by-water body approach. Under the parameter-by-parameter approach, States and authorized Tribes determine whether water quality is better than the applicable criteria for a specific parameter or pollutant that would be affected by a new discharge or an increase in an existing discharge of the pollutant. For example, if dissolved oxygen levels were at 7 milligrams per liter (mg/L) and the criteria were 5 mg/L, that water body would be a high quality water for dissolved oxygen, but might not necessarily be a high quality water for another parameter. Such determinations are generally made at the time of a permit application for a new discharge or an increase in an existing discharge of the pollutant in question. The designational approach weighs chemical, physical, biological, or other factors to judge a water body's overall quality. EPA has approved both approaches, and, under today's proposed rule, either approach or a combination of the approaches would be available to the Commonwealth for identifying high quality waters.

Some States use the designational approach to identify high quality waters. Under one type of designational approach, a water body must attain both the aquatic life and recreational uses to be considered a high quality water. For example, a water body that is attaining one of it designated uses (such as aquatic life) would not receive an antidegradation review if the water body were not attaining its other use (such as recreation). EPA has found this approach to be consistent with 40 CFR 131.12. There are other ways to implement the designational approach. For example, a State could designate a water body as a high quality water for that use if the water body were attaining either the aquatic life use or the recreational use. Under this approach, an antidegradation review would be conducted for aquatic life uses when, for example, biological indices rated the macroinvertebrate or fish populations as ''good'' even if the fecal coliform densities exceeded levels safe for recreation in and on the water.

In today's proposal, EPA is not requiring a specific approach that Kentucky must use in identifying high quality waters. Rather, the Agency is continuing its long-standing policy that would allow Kentucky to use, as appropriate, biological or chemical data or a combination of both on a parameter-by-parameter basis, or a designational approach to identify high quality waters. EPA is seeking comments on the pollutant-by-pollutant and designational approaches for identifying high quality waters.

The Commonwealth may identify high quality waters at the time of a permit application for a new discharge or an increase in an existing discharge, or may identify high quality waters at any time based on a review of ambient data showing that the quality of the water is better than the levels necessary to support the propagation of fish, shellfish, and wildlife and recreation in and on the water. To comply with the antidegradation policy for a high quality water, the Commonwealth must make a high quality water determination prior to allowing lower water quality in the water body.

Kentucky, in a May 24, 2001, letter from Jack A. Wilson, Director, Kentucky Division of Water, to Ms. Beverly Banister, Director, Water Management Division, EPA Region 4, stated, '' * * * the DOW (Division of Water) strongly disagrees with the parameter-by-parameter approach.'' EPA interprets this statement as a strong preference by the Commonwealth that any Federal rule be written in a way not to limit its approach for the identification of high quality waters to the use of ambient chemical data.

The Commonwealth's existing antidegradation program uses biological data and information to rate and evaluate waters. EPA considers Kentucky's biological approach to be a valid framework for identifying high quality waters under today's proposal. Kentucky has developed a substantial database on the occurrence and diversity of ambient macroinvertebrate populations and fish populations found in surface waters of the Commonwealth, and has used this data to establish indices of relative aquatic health for these two subpopulations of aquatic life.

Based on EPA's review of Kentucky's biomonitoring program, the data and the indices generated by the Commonwealth, EPA believes that the assessment of any segment resulting in a biological rating of ''good,'' rather than ''excellent,'' for either a macroinvertebrate or a fish population, when using the methods referenced in 401 KAR 5:030, section 1.(1)(b)3.a. and b., is sufficient to conclude that the ambient water quality of that segment is better than that ''necessary to support propagation of fish, shellfish, and wildlife,'' and, therefore, that segment should be considered to be a high quality water.

EPA believes that the Commonwealth, in some cases, has sufficient biological data for the assessment of aquatic life uses, and determinations for high quality waters, but, in other instances, additional data and information may be required. Where additional data and information are required for a determination, Kentucky could request the permit applicant to collect additional biological data using the methodologies referenced in the Commonwealth's water quality standards regulation. If no biological data are available for the segment's macroinvertebrate or fish population, a survey should be conducted for both macroinvertebrate and fish populations; a rating of ''good'' for either population is sufficient to document that the segment is a high quality water. However, EPA also believes that there may be some instances where the Commonwealth may choose to collect the necessary chemical data.

For recreational uses, the Commonwealth may use ambient water column data on bacteriological densities. Kentucky's existing water quality standards specify fecal coliform bacteriological criteria for protection of recreation in and on the water. In making judgments of water quality that is better than the levels necessary to support recreation in and on the water, the Commonwealth can use ambient data for fecal coliform densities. If Kentucky water quality standards are revised to include the use of water quality criteria for E. coli or enterococci, Kentucky must use the bacteria criteria that are adopted and approved at the time a determination for recreation high quality is made.

Under today's proposal, EPA does not require the Commonwealth to take a particular approach where there are insufficient data to make a definitive determination that a water body is high quality water. In the absence of definitive data and information which demonstrates that a water body is high quality, the Commonwealth may either consider the water body to be a high quality water for the purposes of meeting antidegradation permitting requirements, or require the collection of additional data for a high quality determination. If the Commonwealth considers the water body to be a high quality water, the Commonwealth will ensure that all other antidegradation requirements are met prior to making a determination as to whether the discharge is necessary to accommodate important economic or social development in the area in which the waters are located, and whether the discharge will be allowed.

EPA is soliciting comments on the approach in today's proposal, which provides Kentucky broad latitude in identifying high quality waters. EPA recognizes that Kentucky is likely to use the biological indices developed by the Commonwealth for rating ambient macroinvertebrate and fish populations, as an acceptable means for identifying the Commonwealth's high quality waters. EPA specifically requests comment on the use of biological data, and requests that commenters identify cases where a water body or water segment would not be identified as a high quality water using biological data, but that water body or segment would be demonstrated to be a high quality water through the consideration of ambient chemical data.

EPA also solicits comments on whether the regulation, if made final, should require the Commonwealth to use a particular approach in identifying high quality waters. EPA considered specifying the parameter-by-parameter approach using only chemical data in the proposed rule. The parameter-by-parameter approach takes advantage of water column data, which, in many States, are more readily available than other types of data. Therefore, EPA is also requesting comments on this alternative approach to today's proposal.

C. How Will Kentucky Implement the Proposed High Quality Waters Policy?

1. Significance of the discharge. Proposed activities that could result in a lowering of water quality in a high quality water, including proposed KPDES permits for new or increased discharges, would require an antidegradation review, unless the Commonwealth determines that the proposed activity will not result in a significant lowering of water quality. EPA's practice defers to States' judgment on identifying when an antidegradation review would not be needed. EPA does not interpret the antidegradation policy to preclude a determination that certain proposed new discharges or increases in existing discharges may have an insignificant or *de minimis* impact on water quality and, therefore, may not require an antidegradation review.

EPA's water quality standards regulation does not specify a threshold below which an antidegradation review would not be needed. However, EPA has long interpreted the antidegradation policy to allow a determination that certain proposed new discharges or increases in existing discharges may have an insignificant or *de minimis* impact on water quality and, therefore, may not require an antidegradation review. (*See,* for example, the November 10, 1986, memorandum signed by William A. Whittington, Director of the Office of Water Regulations and Standards, and James R. Elder, Director, Office of Water Enforcement and Permits, indicating that one of the principles of the antidegradation policy is a focus on significant actions.)

EPA has reflected this principle in the development of its own rulemakings. For example, in the ''Proposed Water Quality Guidance for the Great Lakes System,'' (GLI) 58 FR 20802, April 16, 1993, EPA defined the term ''significant lowering of water quality'' and discussed the concept generally, stating that:

> EPA and the Great Lakes States have chosen to prioritize actions that pose a threat to the protection and maintenance of water quality in high quality waters by focusing the Proposed Guidance on significant lowering of water quality. (*Id.,* p. 20894)

In the proposed Great Lakes rule, EPA considered certain chemicals to be bioaccumulative chemicals of concern (BCCs) and distinguished those chemicals from other parameters affecting water quality. For BCCs, EPA also considered any increase in mass loading of such a pollutant to result in a significant lowering of water quality. But for other pollutants, EPA included other factors such as assimilative capacity (in addition to loading) in determining whether a proposed discharge would result in a significant lowering of water quality. The proposed Great Lakes rule also noted that the decision-maker can make a case-by-case determination regarding the significant lowering of water quality based on other relevant considerations. The final rule did not reflect the significant lowering of water quality based on other relevant factors because it dealt only with BCCs.

As for non-BCCs, the Agency also discussed in the proposed Great Lakes rule the position that certain proposed discharges may not result in a significant lowering of water quality and, therefore, would not require an antidegradation review. EPA indicated that the definition of significant lowering of water quality for non-BCC pollutants is adequate to maintain and protect water quality of in the Great Lakes system. EPA also stated:

> It does not undercut the requirement that limitations protect existing uses, *i.e.*, protect all applicable water quality standards. Rather, it limits the requirement to conduct an antidegradation review to situations when a source sought to increase existing permit limitations on the rate of mass loading, except as the increase is *de minimis* or there would be no change in ambient water quality, and thereby will limit the number of actions subject to a full antidegradation review. *EPA believes this is an appropriate balance between the need to protect water quality for these substances and the burden, to both the regulated community and the regulatory agencies, of conducting an antidegradation review.* (emphasis added). (*Id.,* p. 20895)

EPA has also discussed the concept of significant degradation in the ''Advance Notice of Proposed Rulemaking,'' 63 FR 36742, July 7, 1998. EPA noted the use of significance determinations by States and Tribes and commented upon the concept generally:

> Although not discussed in 40 CFR section 131.12 of the water quality standards regulation, State and on occasion Tribal Tier 2 implementation procedures often include guidelines which are used to determine when the water quality degradation that will result from a proposed activity is significant enough to warrant further antidegradation review. Where the degradation is not significant, the antidegradation review is

typically terminated for that proposed activity. The significance evaluation is usually conducted on a pollutant-by-pollutant basis, even where a water body-by-water body approach is used to identify high quality waters, and significant degradation for any one pollutant triggers further review for that pollutant. *Applying antidegradation requirements only to activities that will result in significant degradation is a useful approach that allows States and Tribes to focus limited resources where they may result in the greatest environmental protection.* (emphasis added). (*Id.,* p. 36783)

EPA considers the rationale set forth in the memorandum and these notices of proposed rulemakings, relative to the application of antidegradation review to activities involving a significant lowering of water quality, to be equally applicable here.

EPA believes that the assessment of the degree to which water quality is projected to be lowered as a result of proposed activities should consider factors such as:

- The projected magnitude of impact on the receiving stream (or possible effects on water bodies downstream of the receiving stream),
- The projected reduction in the assimilative capacity of the receiving stream(s), and potential impacts on sediment and biota,
- The magnitude of the increase in the discharge from a facility over existing or previously permitted discharges (or existing discharge loadings),
- The temporary nature of lowering water quality, or
- An evaluation which captures a combination of these factors.

These factors are similar to those which EPA Region 4 included in draft guidance to Region 4 States and Tribes on this issue. (*See* May 7, 1996, letter from Fritz Wagener, Chief Water Quality Standards Section to Terry Anderson, Water Quality Branch, Kentucky Division of Water.) However, this guidance also cautions States that the use of too high of a threshold in a determination of *de minimis* degradation could unduly restrict the number of proposed activities that are subject to a full antidegradation review.

EPA also believes that some situations will result in little or no impact, and these situations do not rise to the level that warrants further consideration under the high quality waters provisions of the antidegradation policy. Such a situation might involve the issuance of a general KPDES permit for a category of discharges where no water quality impact, or a very minimal water quality impact, is expected to result from the cumulative effect of all discharges that are authorized by the issuance of the general permit.

2. Alternatives to lowering water quality. Those most likely to be indirectly affected by this rulemaking are persons requesting new permits to discharge into high quality waters and current permittees who are requesting a revision of their permits to expand their discharges into high quality waters. If the Commonwealth determines that the new or expanded discharge could result in a significant lowering of water quality, the proposed regulation for implementing the high quality water policy requires the Commonwealth before authorizing the lowering of water quality to determine that an increased discharge is necessary and that the lowering of water quality will accommodate important economic or social development. In making that determination, the Commonwealth would evaluate whether there are alternatives that would avoid the need to lower water quality and whether the lowering of water quality is important for economic and social development in the area of the discharge.

EPA considers pollution prevention and enhanced treatment alternatives analyses as an appropriate starting point and of particular importance in an antidegradation review for both industrial and municipal dischargers. Given the variety of engineering approaches to pollution control, a number of options are available that could reduce or eliminate the anticipated lowering of water quality. Some of these include substituting less-toxic or less-bioaccumulative chemicals for the toxic or bioaccumulative chemical. Another approach could involve water conservation to reduce the overall volume of waste water and possibly reduce pollutant mass loadings. Other approaches could include more careful control of the materials in the process stream, the recycle or reuse of waste byproducts, and operational changes to reduce the quantities of waste. Kentucky would need to make a determination that an alternative or combination of alternatives is cost-effective. If cost-effective pollution prevention alternatives are available, there would be no need for the lowering of water quality.

If the pollution prevention alternatives alone were not sufficient to eliminate the necessity for lowering of water quality, Kentucky would focus on ensuring that the actual degradation of the high quality water is reduced to the greatest extent practicable. EPA expects that Kentucky would evaluate whether the relative cost of the least costly option for enhanced treatment would still allow the proposed activity to occur without resulting in a significant lowering of water quality. EPA has not established a benchmark for determining whether alternative or enhanced treatment options are affordable. Kentucky would make the determination.

As described in section II.B, Kentucky has adopted implementation procedures for exceptional waters at 401 KAR 5:030 section 1.(3). These procedures require the consideration of the following discharge and enhanced treatment alternatives in a demonstration that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located:

1. Discharge to other treatment facilities;
2. Use of other discharge locations;
3. Water reuse or recycling;
4. Process or treatment alternatives; and
5. On-site or subsurface disposal.

Kentucky's current regulations limit the application of this evaluation process to exceptional waters. EPA did not propose these specific elements for consideration in high quality waters because they might limit the type of information that the Commonwealth could potentially use in making a determination on the proposed lowering of water quality. For example, a more costly alternative could be available which might result in less water quality degradation, but the additional cost might be considered to be reasonable, in light of the degradation that would occur. Although EPA chose not to adopt Kentucky's procedures for exceptional waters for today's proposal, the Agency solicits comment on whether the Agency should use these provisions rather than the more general ones included in today's proposal.

3. Impact of lowering water quality. If the increased loading is determined to be necessary, Kentucky would then have to determine that the lowering of water quality would support important economic or social development in the area where the discharge is to occur. Kentucky's current regulations include a methodology (''The Interim Economic Guidance for Water Quality Standards: Workbook,'' U.S. EPA, 1995) for an applicant to follow when requesting a new or significantly increased discharge in exceptional waters. EPA believes that several types of analyses could be used to determine the effect of more stringent controls on the economic and social well-being of a community. Therefore, the proposed rule does not limit the Commonwealth to one methodology. The Commonwealth could develop or

identify guidance for applicants to use in evaluating the socioeconomic benefits to the affected community. The Agency would be particularly interested in receiving any peer-reviewed methodologies or literature relevant to these analyses.

Antidegradation reviews are typically triggered when a new or increased discharge is requested as part of a CWA section 402 KPDES permit, CWA section 404 dredge and fill permits, and other activities requiring a CWA 401 certification. Some States conduct antidegradation reviews as part of their continuing planning process or consider antidegradation reviews as part of their watershed planning process.

On October 1, 1999, Kentucky proposed revisions to the Commonwealth's water quality standards which included specific provisions for evaluation of new and expanded discharges to the category of use protected waters. These proposed provisions comprised an evaluation process for consideration of lowering water quality in use protected waters. However, the provisions were subsequently withdrawn from consideration prior to final adoption of the revisions to Kentucky's antidegradation provisions on December 8, 1999.

EPA is requesting comment on whether Kentucky's detailed October 1, 1999, proposal should be part of the final Federal regulation itself, or used to implement the broader regulatory language in today's proposed rule. Kentucky recommended in a letter of May 24, 2001, from Mr. Jack A. Wilson, Director, Division of Water, to Ms. Beverly Banister, Director, Water Management Division, that EPA pursue an approach based on the provisions formally proposed for adoption as revisions to Kentucky water quality standards on October 1, 1999, during the triennial review conducted by the Commonwealth. In that proposal, Kentucky included a socioeconomic demonstration, including an alternatives analysis, for the category of waters defined as ''use protected'' waters, but these provisions were withdrawn prior to adoption of the triennial review revisions to Kentucky water quality standards. As discussed in section B, the use protected category of waters includes any water not designated as an exceptional water or an outstanding national resource water by the Commonwealth. Kentucky also suggested that waters currently listed pursuant to CWA section 303(d) as having ''impaired uses'' be excluded from high quality water antidegradation requirements.

The eleven factors included in the October 1, 1999, proposal were:

1. The effect of the facility on an existing environmental or public health problem;
2. The increase or avoidance of a decrease in employment;
3. The increase in production level;
4. An increase in efficiency;
5. Industrial, commercial, or residential growth;
6. Any other economic or social benefit to the community;
7. Discharge to other treatment facilities;
8. Use of other discharge locations;
9. Water reuse or recycle;
10. Process and treatment alternatives; and
11. On site or sub-surface disposal.

EPA did not choose to include this level of specificity in the proposed rule because the list may not include all of the factors or alternatives that might arise in every circumstance. Further, EPA's historical position is that the States should retain some discretion in identifying the relevant factors to examine and the threshold of socioeconomic benefits necessary to justify a lowering of water quality in a high quality water.

EPA is also requesting comment on another alternative to today's proposal that would expand the number of waters in the exceptional waters category. Under such an approach, the entire suite of Kentucky's exceptional water implementation provisions in 401 KAR 5:030, section 1.(1)(a) and (b) would apply to all high quality waters in the Commonwealth. As stated previously in section II.B., Kentucky's exceptional waters implementation provisions generally include more stringent controls than those required by EPA's regulations at 40 CFR 131.12(a)(2) for high quality waters. EPA also recognizes that the Kentucky Division of Water has stated that portions of the implementation provisions for exceptional waters are more detailed than the Division would consider as applying to high quality waters. Therefore, any consideration of this alternative for inclusion in a final rule would be conditioned upon an agreement by the Commonwealth that application of all exceptional water implementation provisions was appropriate for all high quality waters in the Commonwealth.

4. Administrative process. EPA believes that the Commonwealth's existing administrative processes for public review of proposed decisions for waters protected under the provisions of 401 KAR 5:029 section 1.(2) may be used for all high quality waters. Kentucky's existing mechanisms for intergovernmental coordination and public participation processes in antidegradation decisions for the Commonwealth's existing categories of surface waters will serve decision-making well on all high quality waters. These existing administrative processes are contained in 401 KAR 5:030, 401 KAR 5:075, and sections .015, .017, .160, .270, .280, and .320 of Kentucky Revised Statute (KRS) chapter 013A. These provisions include the following:

A copy of the public notice is mailed to:

1. The applicant,
2. EPA Region 4,
3. Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources, the Advisory Council on Historic Preservation, Kentucky Historical Society and other appropriate authorities, including any affected States,
4. The U.S. Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service,
5. Any user identified in the permit application of a privately-owned treatment works, and
6. Persons on a mailing list developed by the Kentucky Division of Water by:

—Including those who request in writing to be on the list,
—Soliciting persons from lists of participants in past permit proceedings in the area, and
—Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as newsletters, environmental bulletins, or State law journals.

In addition, KDOW maintains a list of Electronic Mail addresses as a replacement or as a supplement to its mailing list, and publishes a notice of proposed KPDES permitting actions on the KDOW web site. For major KPDES permits, Kentucky Division of Water is required to publish a notice in a daily or weekly newspaper in the area potentially affected by the facility or activity.

EPA believes that Kentucky's public participation processes are consistent with the Agency's requirements and therefore, does not see the need for additional implementing regulations for this purpose. For an example of a Public Notice which includes notification that provisions of the Commonwealth's antidegradation policy have been applied in the development of KPDES permit conditions, please visit the Web site: *http://water.nr.state.ky.us/dow/2002-23.htm.*

EPA, in developing today's proposed rule, reviewed the provisions of Kentucky Revised Statutes chapter 013A00 section .100, which require an administrative body in the Commonwealth to prescribe by administrative regulation, the

implementation, or interpretation of a statement, policy, procedure, or other requirement of general applicability. EPA acknowledges that many of the details and/or options for implementing the proposed rule are outlined in the notice of today's proposed rule. While EPA is publishing today's proposed rule based on the conclusion that the Commonwealth should be in a position to implement the rule as proposed, the level of detail in any final rule will be determined after a thorough review of all comments that relate to this statutory provision limiting Kentucky's ability to implement the regulation.

EPA is particularly interested in receiving comments relating to whether today's proposal provides a sufficient level of detail and provides an adequate regulatory basis for the Commonwealth (1) to consider protection of high quality waters in the Commonwealth, and (2) to issue KPDES permits in cases where important social or economic development can be demonstrated to be necessary for lowering of water quality in these high quality waters. In light of Kentucky's statutory provision, the Agency also seeks comment on whether some of the guidance set forth in this notice should instead be codified as a part of the rule.

D. What Are the Potential Cost Implications of the Proposed Rule?

The total annualized cost of today's proposed rule for both the Commonwealth and the dischargers could range from $127,000 to $3,000,000. The proposal does not impose any predictable impacts with the exception that EPA's rule could increase the number of waters that may benefit from high quality waters protection. However, economic consequences that would flow from this proposal are uncertain because they are wholly dependent on discretionary activities of individual dischargers and the Commonwealth.

If the Commonwealth were to identify high quality waters as a result of this rule, all new and existing dischargers wanting to increase their discharges into those waters would have to ask Kentucky to authorize the discharge, including any lowering of the water quality. If Kentucky were to grant the request, the only cost to the discharger would be the cost of its request (and supporting documentation) to Kentucky.

If Kentucky were to deny the request to lower water quality, the discharger would bear the additional cost for the controls needed to avoid lowering the water quality. Economic consequences flowing from EPA's proposal if finalized would depend on the Commonwealth's actions (including waiving antidegradation reviews for increased discharges that it determines would not significantly affect water quality). Given the uncertainty of possible outcomes, EPA cannot fully predict the economic consequence of its action.

Although this proposed rule does not directly impact small entities, EPA nonetheless tried to examine the costs of having to supply the necessary documentation to support a request for a discharge that would lower water quality for a high quality water in Kentucky. EPA examined the costs of submitting the analyses and concluded that, relying on conservative assumptions, this cost could range from $2,300 to $30,000 for a minor discharger and $10,000 to $72,000 for a major discharger. Small entities may be more likely to be classified as minor dischargers than as major dischargers; minor dischargers may be less likely to request increases in discharges because they discharge and are permitted for fewer toxic pollutants, which are more likely to adversely affect water quality in small amounts triggering an antidegradation review. However, EPA cannot determine the number of small entities that may incur this onetime cost, or the impact of this cost on affected small entities (because high quality waters in the State of Kentucky have not been identified, and the specific facilities or types of facilities likely to be affected cannot be estimated). Nonetheless, given the low magnitude of these costs, that they are onetime costs, and that increased discharges are likely to be associated with increases in production, revenues (which could result in a change in classification from small entities to large entities), and profits, the costs would not likely impose a significant economic impact on a substantial number of small entities.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review)

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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

B. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

C. Executive Order 13132 (Federalism)

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule would not affect the nature of the relationship between EPA and States generally, for the rule only applies to high quality waters in Kentucky. Further, the proposed rule would not substantially affect the relationship of EPA and the Commonwealth of Kentucky, or the distribution of power or responsibilities between EPA and the various levels of government. The proposed rule would not alter the State's authority to issue KPDES permits or the State's considerable discretion in implementing the antidegradation high quality waters provisions. Further, this proposed rule would not preclude Kentucky from adopting water quality standards that meet the requirements of the CWA. Thus, Executive Order 13132 does not apply to this rule.

Although Executive Order 13132 does not apply to this rule, EPA did consult with representatives of the Commonwealth of Kentucky in developing this rule. EPA met with representatives of the Kentucky Division of Water on December 13, 2001, and on December 14, 2001, with representatives of the Kentucky Natural Resources and Environmental Protection Cabinet and the Division of Water on approaches addressed in the proposal. The representatives with whom EPA met expressed strong disagreement with the parameter-by-parameter approach to identifying high quality waters. Their strong preference was for any Federal rule not to limit Kentucky's approach for the identification of high quality waters to the use of ambient chemical data. The Commonwealth's existing antidegradation program uses biological data and information to rate and evaluate waters. EPA is proposing to continue its longstanding policy that would allow Kentucky to use, as appropriate, biological data, chemical data or a combination of both types of data on a parameter-by-parameter basis or a designational approach to identify high quality waters.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials. EPA plans to continue to help Kentucky adopt its own antidegradation high quality waters provisions so that EPA will not have to finalize the rule. In addition, the proposed rule provides an extended 120 day comment period which will help provide additional time for the Commonwealth.

D. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have a substantial direct effect on tribal governments, on the relationship between the Federal government and Indial tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. There are no Indian tribes in Kentucky. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits comment on this proposed rule from tribal officials.

E. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

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

F. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It does not include any information collection, reporting or recordkeeping requirements. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

G. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities.

The RFA requires analysis of the impacts of a rule on the small entities subject to the rule's requirements. *See United States Distribution Companies* v. *FERC,* 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's proposed rule establishes

no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. (''[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule*,'' *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court).) The Agency is thus certifying that today's proposed rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA.

Under the CWA water quality standards program, States must adopt water quality standards for their waters that include antidegradation policies and implementation methods and must submit those water quality standards to EPA for approval; if the Agency disapproves a State standard and the State does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA also has the authority to promulgate uses and criteria in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the Act. These State standards (or EPA-promulgated standards) are implemented through various water quality control programs including the National Pollutant Discharge Elimination System (NPDES) program, which limits discharges to navigable waters except in compliance with an EPA permit or a permit issued under an approved State program. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet applicable water quality standards.

Thus, under the CWA, EPA's promulgation of water quality standards establishes standards that the State implements through the NPDES permit process. The State has discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. While the State's implementation of Federally promulgated water quality standards may result in new or revised discharge limits being placed on small entities, the standards themselves do not apply directly to any discharger, including small entities.

Today's proposed rule, as explained earlier, does not itself establish any requirements that are directly applicable to small entities. As a result of this action, the Commonwealth of Kentucky will need to ensure that permits it issues include any limitations on discharges necessary to comply with the antidegradation policy and procedures for high quality waters established in the final rule. In doing so, the Commonwealth will have a number of discretionary choices associated with permit writing. While Kentucky's implementation of the rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local or Tribal governments or the private sector. The proposed rule imposes no enforceable duty on the State or any local or Tribal government or the private sector; rather this rule proposes an antidegradation policy and implementation methods for certain high quality waters in Kentucky which, when combined with the uses Kentucky designated for the waters of the Commonwealth and the water quality criteria adopted to protect the designated uses, constitute the water quality standards for high quality waters. The Commonwealth may use these resulting water quality standards in implementing its water quality control programs. Today's proposed rule does not regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect any small governments. As stated, the proposed rule imposes no enforceable requirements on any party, including small governments. Moreover, any water quality standards, including those proposed here, apply broadly to dischargers and are not uniquely applicable to small governments. Thus this proposed rule is not subject to the requirements of section 203 of the UMRA.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposal does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such

standards should be used in this regulation.

J. Endangered Species Act

Pursuant to section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1536, in consultation with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS), Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of any listed, threatened or endangered species or result in the destruction or adverse modification of designated critical habitat of such species. Today's proposal would extend antidegradation protection for waters that presently may be under-protected by Kentucky's standards and would potentially improve the protection afforded to threatened and endangered species.

The U.S. Fish and Wildlife Service (the Service or FWS) has been involved in several ways during the development of the various provisions of 401 KAR 5:030, and has supported the revision to Kentucky's water quality standards which established 401 KAR 5:030 as new regulatory provisions of the Commonwealth. In a letter dated September 11, 1995, from Dr. Lee A. Barclay, Cookeville, Tennessee Field Supervisor, to Fritz Wagener, Chief, Water Quality Standards Section, EPA Region 4, the Service responded to EPA Region 4's request for comments on the initially adopted antidegradation implementation procedures, as follows: ''The Service endorses this revision to Kentucky's water quality standards.''

In addition, EPA and the Service conducted an informal consultation of EPA's August 30, 2000, approval of other revisions to Kentucky's standards. The Service provided comments on the EPA's draft Biological Evaluation of the standards revisions by letter November 1, 2000. On July 10, 2001, the informal consultation was completed, based on the Service's concurrence submitted from Dr. Lee A. Barclay, Cookeville, Tennessee Field Supervisor, FWS, to Ms. Beverly H. Banister, Director, Water Management Division, EPA Region 4, that the revisions to the standards were not likely to adversely affect threatened or endangered species.

The Service's endorsement of Kentucky's water quality standards pertains only to compliance with Endangered Species Act. EPA determines whether the State or Tribal water quality standards are in compliance with the CWA and implementing regulations.

EPA is transmitting this proposed rule to the Service for review and comment, concurrent with the publication of today's notice. That transmittal constitutes EPA's initiation of informal consultation with the Service on this proposed rule, pursuant to section 7 of the Endangered Species Act and its implementing regulations. EPA will continue to work closely with the Service to ensure the final rule will not adversely affect threatened or endangered species.

K. Plain Language

Executive order 12886 directs each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

—Have we organized the material to suit your needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that isn't clear?
—Would a different (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—What else could we do to make the rule easier to understand?

List of Subjects in 40 CFR Part 131

Environmental protection, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 7, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, EPA proposes to amend 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.39 is added to read as follows:

§ 131.39 Kentucky.

(a) *What antidegradation policy applies to high quality waters in the Commonwealth of Kentucky?* (1) Where the quality of the water is better than levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, the Commonwealth of Kentucky (hereafter, Commonwealth or Kentucky) shall maintain and protect that quality unless Kentucky finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the water is located.

(2) Before allowing lower water quality, the Commonwealth shall ensure that all measures to fully protect existing uses are implemented.

(3) Before allowing lower water quality, the Commonwealth shall ensure that the most protective statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control shall be achieved.

(b) *What are high quality waters?* High quality waters include any surface water of the United States within the Commonwealth of Kentucky where the quality of the water is better than that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, except for waters regulated by Kentucky under 401 Kentucky Administrative Register 5:030 sections 1.(1)(a) and (b).

(c) *How will the Commonwealth evaluate requests to lower water quality?* The Commonwealth shall evaluate the following information when deciding whether to approve a request to lower water quality in a high quality water:

(1) Alternatives to the Request to Lower Water Quality. Any cost effective pollution prevention alternatives, enhanced treatment techniques, or other alternatives that are available to the entity, that would eliminate or significantly reduce the extent to which the increased loading results in a lowering of water quality.

(2) Important Economic or Social Development. The economic or social development and the benefits to the area in which the waters are located that will be foregone if the lowering of water quality is not allowed.

[FR Doc. 02–28922 Filed 11–13–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 67, No. 220

Thursday, November 14, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–041N]

Summit on Listeria Monocytogenes

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a one day summit on *Listeria monocytogenes* on November 18, 2002. The summit will provide a forum for experts from government, academia, industry and consumer organizations to discuss current government thinking and activities regarding *L. monocytogenes.*

DATES: The public meeting is scheduled for Monday, November 18, 2002. The meeting will be held from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The public meeting will be held at the Holiday Inn, 550 C Street, SW., Washington, DC. A tentative agenda is available in the FSIS Docket Room and on the Internet at *http://www.fsis.usda.gov.* FSIS welcomes comments on the topics to be discussed at the public meeting. Please send an original to the FSIS Docket Room, Reference Docket #02–041N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room at the address provided above.

FOR FURTHER INFORMATION CONTACT: Karen Hulebak at (202) 720–2644. Registration for the meeting will be onsite. FSIS encourages attendees to pre-register as soon as possible by contacting Ms. Mary Harris of the FSIS Planning Staff at (202) 690–6497 or by e-mail to *mary.harris@fsis.usda.gov.* If a sign language interpreter or other special accommodations are necessary, contact Ms. Harris at the above numbers no later than November 15, 2002.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 2001, FSIS published a proposed rule ''Performance Standards for the Production of Processed Meat and Poultry Products'' (66 FR 12590). In that document, the Agency proposed testing requirements intended to reduce the incidence of *Listeria monocytogenes* in ready-to-eat (RTE) meat and poultry products, as well as food safety performance standards applicable to all RTE and partially heat-treated meat and poultry products. The Agency received numerous comments on several aspects of the proposed rule.

Public Meeting

The Agency is providing a forum for experts from government, industry, academia, and consumer organizations to discuss current research and information on the best methods to identify and control *L. monocytogenes* in the processing environment and reduce the incidence in all RTE meat and poultry products.

The meeting will consist of sessions on *Listeria* risk assessment, risk management, and risk communication. The FSIS moderators for the sessions on risk assessment, management, and communication will provide an overview of current Agency activities. Representatives from industry, government, and academia will discuss various issues related to assessing, managing, and communicating the risks associated with *Listeria monocytogenes.* Following these three sessions, stakeholders from industry, consumer groups, and academia will provide their perspectives on the current and proposed regulatory and industry practices and research needs. The Agency will invite comment and discussion at each of the sessions.

FSIS has developed a list of questions for which it seeks input.

Regarding risk assessment:

- How can risk assessment be used to improve HACCP (e.g., the use of food safety objectives) as it relates to *L. monocytogenes*?
- What approaches might be employed to collect data on the presence or level of *L. monocytogenes* on a RTE product, or on possible correlations between *L. monocytogenes* in the environment and *L. monocytogenes* in product produced in that environment. Such data are critical for risk assessments in order to inform decision makers and other stakeholders in the development of effective controls.
- What is the nature and level of peer-review that is necessary to obtain a scientifically sound assessment upon which to base regulatory decisions? When in the process should FSIS seek such input?

Regarding risk management:

- What is the relative role of environmental and product testing in detecting and preventing *L. monocytogenes* contamination? What are elements of an effective testing program?
- For processing interventions, what are the different types, the level of pathogen reduction achieved by each, and the interventions best suited for small and very small establishments?

Regarding risk communication:

- Through what channels and tools can FSIS most effectively disseminate food safety advice to those at particular risk of developing listeriosis? Are people listening to the messages out there now?
- What role does the food industry see itself playing in communicating risks associated with RTE foods to the public?
- When should FSIS issue a public health alert in an outbreak situation? Should it do so even if the cause of the outbreak has not yet been determined so that consumers—particularly those at high risk—can take precautions?

Additional Public Notification

Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice and informed about the mechanism for providing their comments, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on line through the Internet at *http://www.fsis.usda.gov.* The update is used to provide

information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents and stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office at (202) 720–9113. To be added to the free e-mail subscription service (Listserv), go to the ''Constituent Update'' page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update.htm*. Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done in Washington, DC, on November 8, 2002.

Dr. Garry L. McKee,

Administrator.

[FR Doc. 02–28915 Filed 11–13–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for Clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Annual Capital Expenditures Survey.

Form Number(s): ACE–1(S), ACE–1(M), ACE–1(Long), ACE–2.

Agency Approval Number: 0607–0782.

Type of Request: Revision of a currently approved collection.

Burden: 145,000 hours.

Number of Respondents: 61,000.

Avg. Hours Per Response: 2 hours and 23 minutes.

Needs and Uses: Data on the amount of business expenditures for new plant and equipment and measures of the stock of existing facilities are critical to evaluate productivity growth, the ability of U.S. business to compete with foreign business, changes in industrial capacity, and measures of overall economic performance. The ACES is the current source of comprehensive statistics on business investment in buildings and other structures, machinery, and equipment for private non-farm businesses in the United States.

The plan for the continued survey is a basic annual survey that collects fixed assets and depreciation, sales and receipts, and total capital expenditures for new and used structures and equipment separately, from employer enterprises. This collection is intended to represent the capital expenditure activity of all employer firms and provide comprehensive control estimates of total capital expenditures for structures and equipment by industry. A mail out/mail back survey form will be used to collect data. Employer companies will be mailed one of three forms based on their diversity of operations and number of industries with payroll. Major planned revisions from the previously approved collection are the elimination of the separate question on the amount of capitalized interest incurred during the year to produce or construct assets reported as capital expenditures; and, the addition of a request for data on capitalized costs of computer software developed or obtained for internal use.

The ACES is an integral part of the Federal Government statistical program to improve and supplement ongoing statistical programs. Federal Government agencies, including the Census Bureau, use the data to improve and supplement ongoing statistical programs.

Affected Public: Business or other for-profit, not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202) 395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: November 8, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–28912 Filed 11–13–02; 8:45 am]

BILLING CODE 3510–7–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Quarterly Survey of Residential Alterations and Repairs.

Form Number(s): SORAR–705.

Agency Approval Number: 0607–0130.

Type of Request: Extension of a currently approved collection.

Burden: 2,400 hours.

Number of Respondents: 2,400.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The U.S. Census Bureau is requesting an extension of the current approved collection for the Quarterly Survey of Residential Alterations and Repairs. The Census Bureau is responsible for preparing estimates of the expenditures for residential improvement and repairs. This segment of the construction industry amounted to over $150 billion in 2000. While the majority of the data are gathered from the Consumer Expenditure Survey (OMB number 1220–0050), a portion of the data (nearly $50 billion in 2000) are collected in this survey. The survey form is mailed quarterly to a sample of owners of rental or vacant residential properties. Since residential improvement and repairs are a large growing economic sector, any measure of the construction industry would be incomplete without the inclusion of these data.

The Census Bureau uses the information collected to publish improvement and repair expenditures for rental and vacant residential properties. Data on improvements and repairs to owner-occupied properties are collected in the Consumer Expenditures Survey. Combined published estimates are used by a variety of private businesses and trade associations for marketing studies, economic forecasts and assessments of the construction industry. They also provide all levels of Government with a tool to evaluate economic policy and measure progress towards established goals. For example, the Bureau of Economic Analysis (BEA) uses improvement statistics to develop the residential structures component of the gross private domestic investment in the national income and product accounts.

Affected Public: Individuals or households, business or other for-profit, State, local or tribal governments.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: November 8, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–28913 Filed 11–13–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–855]

Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results of 1999–2001 Administrative Review and Partial Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of 1999–2001 Administrative Review and Partial Rescission of Review.

SUMMARY: We have determined that sales of certain non-frozen apple juice concentrate from the People's Republic of China were made below normal value during the period November 23, 1999, through May 31, 2001. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes in the margin calculations of all of the reviewed companies. Consequently, the final results differ from the preliminary results. The final weighted-average dumping margins for these firms are listed below in the section entitled ''Final Results of the Review.'' Based on these final results of review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman, Stephen Cho, or John Brinkmann, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3534, (202) 482–3798, and (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to 19 CFR Part 351 (April 2001).

Background

On July 9, 2002, the Department published the preliminary results of this review of certain non-frozen apple juice concentrate (''NFAJC'') from the People's Republic of China (''PRC''). *See Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Preliminary Results of 1999–2001 Administrative Review and Partial Rescission of Review*, 67 FR 45462 (July 9, 2002) (''*Preliminary Results*''). The period of review (''POR'') is November 23, 1999, through May 31, 2001. This review covers the following producers or exporters (referred to collectively as ''the respondents''): Shaanxi Haisheng Fresh Fruit Juice Co., Ltd. (''Haisheng''), Shandong Zhonglu Juice Group Co., Ltd. (''ZhongLu''), Yantai Oriental Juice Co., Ltd. (''Oriental''), Qingdao Nannan Foods Co., Ltd. (''Nannan''), Xian Asia Qin Fruit Co., Ltd. (''Xian Asia''), Changsha Industrial Products & Minerals Import and Export Co., Ltd. (''Changsha''), Shandong Foodstuffs Import and Export Corporation (''Shandong''), Shaanxi Hengxing Fruit Juice Co., Ltd. (''Hengxing''), Shaanxi Machinery and Equipment Import and Export Corporation (''SAAME''), Shaanxi Gold Peter Natural Drink Co., Ltd. (''Gold Peter''), Xian Yang Fuan Juice Co., Ltd. (''Xian Yang''), and Sanmenxia Lakeside Fruit Juice Co., Ltd. (''Lakeside'').

In May, 2002, we conducted verification of the questionnaire responses submitted by the following respondents: Hengxing, Xian Asia, and Haisheng. We issued verification reports on July 17, 2002.

We invited parties to comment on the *Preliminary Results*. On August 8, 2002, we received case briefs from Lakeside, and a combined case brief from Haisheng, Zhonglu, Oriental, Nannan, Xian Asia, Shandong, and Hengxing. On August 13, 2002, the petitioners [1] submitted a rebuttal brief. No hearing was held because none was requested.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Merchandise covered by this review is NFAJC from the PRC. NFAJC is defined as all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 2009.70.00.20 and 2106.90.52. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Rescission of Review in Part

As noted in the *Preliminary Results*, Xian Yang reported no shipments of subject merchandise to the United States during the POR. Entry data provided by the Customs Service confirm that there were no POR entries from Xian Yang of NFAJC. Therefore, consistent with the Department's regulations and practice, we are rescinding this review with respect to Xian Yang. (See 19 CFR 351.213(d)(3); *see, also, Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 46763 (September 5, 1996).)

Use of Facts Otherwise Available

As discussed in detail in the *Preliminary Results*, we have determined that companies which did not respond to the Department's questionnaire in this proceeding should not receive separate rates and, thus, are

[1] Coloma Frozen Foods, Inc., Green Valley Packers, Knouse Foods Cooperative, Inc., Mason County Fruit Packers Co-op, Inc., and Tree Top, Inc.

viewed as part of the PRC-wide entity. Moreover, as noted in the *Preliminary Results*, we determine that, in accordance with sections 776(a) and (b) of the Act, the use of adverse facts available is appropriate for companies which did not respond to our requests for information. No party in this proceeding has commented on these issues since the publication of the *Preliminary Results*. Thus, for these final results, we have continued to assign the PRC-wide rate of 51.74 percent to Changsha Industrial Products & Minerals Import and Export Co. and other companies subject to the PRC-wide rate.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and Decision Memorandum'' from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Faryar Shirzad, Assistant Secretary, Import Administration, dated November 6, 2002 (''*Decision Memorandum*''), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review 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 Memorandum* can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/ under the heading ''China PRC.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes to the calculations for the final results. These changes are discussed in the following Comments in the *Decision Memorandum* or in the referenced final calculation memoranda for particular companies:

All Companies

Steam Coal: *Decision* Memorandum Comment 1

Domestic Brokerage and Handling: Decision Memorandum Comment 2

Labor: Pursuant to section 351.408(c)(3) of the Department's regulations, we valued labor using the regression-based wage rate for the PRC published by Import Administration on its website. This data has recently been updated and the revised PRC estimated average hourly wage rate is $0.84 per hour for 2000. See www.ia.ita.doc.gov/wages/00wages/00wages.htm.

Final Results of Review

We determine that the following dumping margins exist for the period November 23, 1999, through May 31, 2001:

Exporter/manufacturer	Weighted-average margin percentage
Qingdao Nannan Foods Co., Ltd.	0.00
Sanmenxia Lakeside Fruit Juice Co., Ltd.	0.00
Shaanxi Gold Peter Natural Drink Co., Ltd.	0.00
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.	0.00
Shaanxi Hengxing Fruit Juice Co., Ltd.	0.00
Shaanxi Machinery and Equipment Import and Export Corporation	0.00
Shandong Foodstuffs Import and Export Corporation	0.00
Shandong Zhonglu Juice Group Co., Ltd.	0.00
Xian Asia Qin Fruit Co., Ltd.	0.00
Yantai Oriental Juice Co., Ltd.	0.00
PRC-wide rate (including Changsha Industrial Products & Minerals Import and Export Co., Ltd.)	51.74

The PRC-wide rate applies to all entries of the subject merchandise, including entries from Changsha Industrial Products & Minerals Import and Export Co., Ltd., except for entries from exporters that are identified individually above.

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). All entries subject to the PRC-wide rate will be assessed duties at the PRC-wide rate listed above.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

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 not be ordering liquidation of entries from Oriental, Nannan, Lakeside, Haisheng, ZhongLu, Xian Yang, Xian Asia, Changsha and Shandong as we have been enjoined from liquidating subject merchandise exported by these companies.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with *de minimis* rates (*i.e.*, less than 0.5 percent) no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 51.74 percent; and (4) for all other non-PRC

exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a 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, which continues to govern business proprietary information in this segment of the proceeding. 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)(3) and 777(i) of the Act.

Dated: November 6, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Valuation of Steam Coal

Comment 2: Deduction of Domestic Brokerage and Handling Charges from U.S. Sales Price

Comment 3: Valuation of Aseptic Bags

Comment 4: Inclusion of Government MIS Apple Price in Surrogate Value Calculation

[FR Doc. 02–28925 Filed 11–13–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–834]

Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On August 27, 2002, in response to timely requests from petitioners[1] and DaiYang Metal Corporation Ltd. (''DMC''), a Korean producer and exporter of subject merchandise, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review of sales by DMC and Pohang Iron & Steel Co., Ltd. (''POSCO'') of stainless steel sheet and strip in coils from the Republic of Korea (''SSSS'') for the period July 1, 2001 through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002) (''*Initiation Notice*''). Because both DMC and petitioners have withdrawn their requests for administrative review, the Department is rescinding this review, in accordance with 19 CFR 351.213(d)(1). The Department is now publishing its determination to rescind this review.

EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–6412.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR part 351 (2001).

[1] Allegheny Ludlum, AK Steel Corporation, J&L Specialty Steel, North American Stainless, Butler-Armco Independent Union, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization

Background

On July 1, 2002, the Department published a notice of opportunity to request administrative review. S*ee Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation*, 67 FR 44172 (July 1, 2002). On July 31, 2002, the petitioners requested that the Department conduct an administrative review for the period July 1, 2001 through June 30, 2002, of POSCO, a producer/exporter of the subject merchandise from Republic of Korea. On July 31, 2002, DMC requested that the Department conduct an administrative review for its sale of the subject merchandise during the period July 1, 2001 through June 30, 2002. On August 27, 2002, the Department published its *Initiation Notice* on SSSS from Republic of Korea. On September 4, 2002, the Department issued antidumping duty questionnaires to POSCO and DMC. On October 7, 2002, DMC withdrew its request for the administrative review and requested that the Department rescind the review. *See Letter to Withdraw DMC's Review Request* dated October 7, 2002. On October 9, 2002, POSCO submitted its Section A response to the Department's questionnaire. See Section A Response of Antidumping Questionnaire dated October 9, 2002. On October 10, 2002, petitioners withdrew their request for an administrative review of POSCO. *See Letter to Withdraw POSCO's Review Request* dated October 10, 2002.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of requested review. Both petitioners and respondents withdrew their respective requests for review within the 90 day time limit; accordingly, we are rescinding the administrative review for the period July 1, 2001 through June 30, 2002, and will issue appropriate assessment instructions to the U.S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or

destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and terms of APO is a sanctionable violation. This determination is issued in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Act.

Dated: November 1, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–28926 Filed 11–13–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of 2000–2001 administrative review, partial rescission of the review, and determination to revoke the order in part.

SUMMARY: We have determined that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 2000, through May 31, 2001. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes in the margin calculations of all of the reviewed companies. Consequently, the final results differ from the preliminary results. The final weighted-average dumping margins for these firms are listed below in the section entitled ''Final Results of the Review.'' Based on these final results of review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory, Wanxiang Group Corporation, and Zhejiang Machinery Import & Export Corp. have requested revocation of the antidumping duty order in part. Based on record evidence, we find that only Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory qualifies for revocation. Accordingly, we are revoking the order with respect to the subject merchandise produced and exported by Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory.

EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller, S. Anthony Grasso, Andrew Smith, or Daniel J. Alexy, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0116, (202) 482–0189, (202) 482–3853, (202) 482–1174, and (202) 482–1540, 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. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to 19 CFR Part 351 (April 2001).

Background

On July 9, 2002, the Department published the preliminary results of this review of tapered roller bearings and parts thereof, finished and unfinished (''TRBs'') from the People's Republic of China (''PRC''). *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Notice of Intent to Revoke Order in Part,* 67 FR 45451 (July 9, 2002) (''*Preliminary Results*''). The period of review (''POR'') is June 1, 2000, through May 31, 2001. This review covers the following producers or exporters (referred to collectively as ''the respondents''): Zhejiang Machinery Import &Export Corp. (''ZMC''), Wanxiang Group Corporation (''Wanxiang''), China National Machinery Import & Export Corporation (''CMC''), Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory (''Hailin''), Luoyang Bearing Corporation (Group) (''Luoyang''), and Weihai Machinery Holding (Group) Co., Ltd. (''Weihai''), Chin Jun Industrial Ltd. (''Chin Jun'').

We invited parties to comment on the *Preliminary Results*. On September 9, 2002, we received case briefs from the Timken Company (''the petitioner''), ZMC, and a combined case brief from CMC, Luoyang, Wanxiang, and Hailin. On September 17, 2002, each of these parties submitted rebuttal briefs.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Merchandise covered by this review is TRBs from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Rescission of Review in Part

As noted in the Preliminary Results, on April 4, 2002, Weihai withdrew its request for a review. The petitioner did not request a review for Weihai. While Weihai's rescission request was made more than 90 days after initiation, 19 CFR 351.213(d)(1) provides that the Department may extend this deadline, and it is the Department's practice to do so where it poses no undue burden on the parties or on the Department. Therefore, in accordance with 19 CFR 351.213(d)(1), we have accepted Weihai's request and we are rescinding the review with respect to Weihai. For a complete discussion of this decision *see* the Memorandum from Team to Susan Kuhbach, ''Partial Rescission of Review,'' dated May 20, 2002, which is on file in the Department's Central Records Unit located in the main Commerce building in Room B-099 (''CRU'').

With respect to Chin Jun, as stated in the *Preliminary Results*, Chin Jun reported no shipments of subject merchandise to the United States during the POR. Entry data provided by the Customs Service confirms that there were no POR entries from Chin Jun of TRBs. Therefore, consistent with the Department's regulations and practice,

we are rescinding this review with respect to Chin Jun. (*See* 19 CFR 351.213(d)(3); *see, also, Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 46763 (September 5, 1996).)

Determination To Revoke the Order, In Part

The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1).

As noted in the *Preliminary Results*, pursuant to 19 CFR 351.222(e)(1), Hailin, Wanxiang, and ZMC requested revocation of the antidumping duty order as it pertains to them. Weihai also requested revocation of the antidumping duty order, in part, on this same basis. However, as we are rescinding this review with respect to Weihai, as discussed above, no further analysis is required with respect to partial revocation of the antidumping duty order as it pertains to Weihai.

According to 19 CFR 351.222(b)(2), upon receipt of such a request, the Department may revoke an order, in part, if it concludes that (1) the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) the continued application of the antidumping duty order is not otherwise necessary to offset dumping; and (3) the company has agreed to its immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV.

With respect to ZMC, we find that a dumping margin exists for ZMC in the instant review. Moreover, in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (January 10, 2001) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1998–1999 Administrative Review and Determination to Revoke Order in Part*, 66 FR 11562 (February 26, 2001) (collectively, ''*TRBs XII*''), ZMC was found to have made sales below NV. Because ZMC does not have three consecutive years of sales at not less than NV, we find that ZMC does not qualify for revocation of the order on TRBs pursuant to 19 CFR 351.222(b).

As for Wanxiang, in *TRBs XII* and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 57420 (November 15, 2001), we determined that Wanxiang did not qualify for revocation because it did not sell the subject merchandise in the United States in commercial quantities in each of the three years underlying its request for revocation. In the instant review, based on our previous determination that Wanxiang did not make sales in commercial quantities during at least one of the three years forming the basis of the revocation request, *i.e., TRBs XII*, we do not need to examine whether Wanxiang made sales in commercial quantities in either of the other two years underlying Wanxiang's request for revocation. Thus, because Wanxiang did not make sales in commercial quantities in each of the three years cited by the company to support its revocation request, we find that Wanxiang does not qualify for revocation of the order on TRBs pursuant to 19 CFR 351.222(b).

Finally, with respect to Hailin, Hailin sold the subject merchandise at not less than NV for a period of at least three consecutive years. Hailin has also agreed in writing to the immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that Hailin, subsequent to the revocation, sold the subject merchandise at less than NV. Finally, based on our examination of the sales data submitted by Hailin (*see* Hailin's July 1, 2002, preliminary results calculation memorandum, which is on file in the Department's CRU, for our commercial quantities analysis with respect to this data), we determine that Hailin sold the subject merchandise in the United States in commercial quantities in each of the three years cited by Hailin to support its request for revocation. Therefore, based on the above facts, and absent evidence on the record that the continued application of the antidumping order is otherwise necessary to offset dumping from Hailin, we determine that Hailin qualifies for revocation of the order on TRBs pursuant to 19 CFR 351.222(b)(2). Accordingly, we are revoking the order with respect to merchandise produced and exported by Hailin.

Use of Facts Otherwise Available

As discussed in detail in the *Preliminary Results*, we have determined that companieswhich did not respond to the Department's questionnaire in this proceeding should not receive separate rates and, thus, are viewed as part of the PRC-wide entity. Moreover, as noted in the *Preliminary Results*, we determine that, in accordance with sections 776(a) and (b) of the Act, the use of adverse facts available is appropriate for companies that did not respond to our requests for information. No party in this proceeding has commented on these issues since the publication of the *Preliminary Results*. Thus, for these final results, we have continued to assign the PRC-wide rate of 33.18 percent to companies that are part of the PRC-entity.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Issues and Decision Memorandum'' from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary, Import Administration, dated November 6, 2002 (''*Decision Memorandum*''), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/ under the heading ''China PRC.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our review of comments received and a reexamination of

surrogate value data, we have made certain changes to the calculations for the final results. These changes are discussed in the following Comments in the *Decision Memorandum* or in the referenced final calculation memoranda for particular companies:

All Companies

• Cup and Cone Steel Valuation

Decision Memorandum Comment 2

• Roller and Cage Steel and Scrap Valuations

Decision Memorandum Comment 4

• Profit Ratio

Decision Memorandum Comment 5

Assessment Rates

In the *Preliminary Results*, we miscalculated the per-unit assessment rates of Luoyang, Hailin, and ZMC by incorrectly multiplying the importer-specific per-unit duty by 100. This error has been corrected in these final results. Also, for all respondents, we have added programming language to determine whether the importer-specific duty assessment rates were *de mimimis* (*i.e.*, less than 0.50 percent).

Wanxiang

We excluded domestic brokerage and handling costs from Wanxiang's reported SG&A labor factor and deducted these expenses as a movement expense in Wanxiang's U.S. price calculation. *See* Comment 12 in the *Decision Memorandum*.

ZMC

We revised ZMC's final results calculations to take into account a minor reporting error noted by ZMC in its case briefs. *See* Memorandum from Case Analyst to File, ''Final Results Calculation Memorandum for Zhejiang Machinery Import and Export Corporation,'' dated November 6, 2002, which is on file in the Department's CRU.

Final Results of Review

We determine that the following dumping margins exist for the period June 1, 2000, through May 31, 2001:

Exporter/manufacturer	Weighted-average margin percentage.
China National Machinery Import & Export Corporation	0.71
Wanxiang Group Corporation	0.00
Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory	0.00
Luoyang Bearing Corporation (Group)	0.06 (de minimis)
Zhejiang Machinery Import & Export Corp.	0.81
PRC-wide rate	33.18

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). All entries subject to the PRC-wide rate will be assessed duties at the PRC-wide rate listed above.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the finalresults of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above, the cash deposit rates will be the rates for these firms shown above, except that, for exporters with *de minimis* rates (*i.e.*, less than 0.5 percent) no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period for which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 33.18 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a 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, which continues to govern business proprietary information in this segment of the proceeding. 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 771(i) of the Act.

Dated: November 6, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: Steel Data Used for Valuing Cups and Cones is Aberrational
Comment 2: Excluding Certain Data from the Cups and Cones Valuation
Comment 3: Steel Data Used for Valuing Rollers and Cages is Aberrational
Comment 4: Excluding Certain Data Used in Steel and Scrap Surrogate Values
Comment 5: Overhead, Selling, General, and Administrative Expense (''SG&A''), and Profit Ratios
Comment 6: Marine Insurance
Comment 7: Energy Factors
Comment 8: Seals Allegedly Used in the Manufacture of TRBs
Comment 9: Treatment of Sales Above Normal Value (''NV'')
Comment 10: Revocations
Comment 11: Wanxiang Group Corporation (''Wanxiang'') Constructed Export Price (''CEP'') vs. Export Price (''EP'') Sales
Comment 12: Wanxiang Domestic Brokerage and Handling
Comment 13: Wanxiang Credit Expenses
Comment 14: Zhejiang Machinery Import & Export Corp.'s (''ZMC'') Market Economy Steel
Comment 15: ZMC Ocean Freight
Comment 16: Valuation of ZMC's Ocean Freight Costs on a Packed Weight Basis
Comment 17: ZMC Labor Hours
Comment 18: China National Machinery Import & Export Corporation (''CMC'') Cage Steel
Comment 19: Valuation of CMC's U.S. Inland Freight Costs on a Packed Weight Basis

[FR Doc. 02–28924 Filed 11–13–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Technology Administration

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Technology Administration.

Title: National Medal of Technology Nomination Applications.

Agency Form Number(s): None.

OMB Approval Number: 0692–0001.

Type of Review: Regular submission.

Burden Hours: 2,625.

Number of Respondents: 105.

Average Hours Per Respondents: 25 hours.

Needs and Uses: The National Medal of Technology is the highest honor bestowed by the President of the United States to America's leading innovators. The Medal has been given annually since 1985 to individuals, teams, or companies for accomplishments in the innovation, development, commercialization, and management of technology. This information collection is critical for the Medal's Nomination Evaluation Committee to determine nomination eligibility and merit according to specified criteria. This information is needed in order to comply with Pub. L. 105–309. Comparable information is not available on a standardized basis.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and the Federal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent no later than 30 days after publication of this notice, to David Rostker, OMB Desk Officer, Office of Management and Budget, Room 10202, Washington, DC 20530.

Dated: November 8, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–28914 Filed 11–13–02; 8:45 am]

BILLING CODE 3510–18–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 7, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59577, published on November 29, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 7, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced

or manufactured in India and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 14, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	91,763,408 square meters.
313	63,500,587 square meters.
317	23,860,878 square meters.
363	74,877,772 numbers.
369–S [2]	1,207,345 kilograms.
Group II	
200, 201, 220, 224–227, 237, 239pt. [3], 300, 301, 331pt. [4], 332, 333, 352, 359pt. [5], 360–362, 603, 604, 611–620, 624–629, 631pt. [6], 633, 638, 639, 643–646, 652, 659pt. [7], 666pt. [8], 845, 846 and 852, as a group	173,115,992 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[4] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[5] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[6] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[7] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[8] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28888 Filed 11–13–02 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Thailand

November 7, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for carryover, the cancellation of carryover, carryforward, the recrediting of unused carryforward, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63036, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 7, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 14, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
200	1,813,256 kilograms.
218	24,956,130 square meters.
300	6,591,528 kilograms.
313–O [2]	30,098,958 square meters.
363	31,429,809 numbers.
613/614/615	66,902,279 square meters of which not more than 39,767,408 square meters shall be in Categories 613/615 and not more than 39,767,408 square meters shall be in Category 614.
619	11,489,616 square meters.
625/626/627/628/629	23,505,436 square meters of which not more than 15,816,582 square meters shall be in Category 625.
Sublevels in Group II	
334/634	978,143 dozen.
336/636	533,244 dozen.
338/339	3,079,535 dozen.
340	479,441 dozen.
341/641	1,031,840 dozen.
342/642	986,503 dozen.
345	469,356 dozen.
347/348	1,471,248 dozen.
435	61,423 dozen.
442	23,148 dozen.
638/639	2,896,059 dozen.
640	827,657 dozen.
645/646	501,611 dozen.

Category	Adjusted twelve-month limit [1]
647/648	1,682,223 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28887 Filed 11–13–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0043, Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3510 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on rules relating to review of National Futures Association decisions in disciplinary, membership denial, registration, and member responsibility Actions.

DATES: Comments must be submitted on or before January 13, 2003.

ADDRESSES: Comments may be mailed to Linda Mauldin, Office of General Counsel, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Linda Mauldin, (202) 418–5497; Fax: (202) 418–5524; email: *lmauldin@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions, OMB control number 3038–0043—Extension.

These rules establish procedures and standards for Commission review of registered futures association procedures for membership and disciplinary actions.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17CFR	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR part 171	22	On occasion	89	1.4	125

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: November 7, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–28865 Filed 11–13–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning a Portable Thermocycler

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application No. 60/412,802 entitled ''Portable Thermocycler,'' filed September 24, 2002. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For

licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention relates to a portable thermocycler having a unique geometric configuration, which allows the device to be made durable, compact and adapted for field-use.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–28906 Filed 11–13–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

(a) The members of the Performance Review Board for the U.S. Army Acquisition Executives are:

1. BG Roger A. Nadeau, Program Executive Officer, Combat Support and Combat Service Support.

2. Mr. Donald L. Damstetter, Jr., Deputy Assistant Secretary of the Army for Plans and Program Resources.

3. Mr. Edward G. Elgart, Director, Communications-Electronics Command Acquisition Center.

(b) The members of the Performance Review Board for the U.S. Army Tank-automotive Command (TACOM), U.S. Army Materiel Command are:

1. Daniel G. Mehney, Deputy for Contracting and Acquisition, TACOM.

2. Thomas C. Boyle, Deputy for Commodity Business Operations, TACOM.

3. Sallie H. Flavin, Deputy Director, Defense Contract Management Agency.

4. John F. Hedderich, III, Associate Technology Director (Systems Concepts and Technology), Armament Research, Development and Engineering Center, TACOM.

5. Richard E. McClelland, Director of Tank-Automotive Research, Development and Engineering Center.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–28905 Filed 11–13–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 16, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 7, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: National Study of Postsecondary Faculty: 2004 (NSOPF: 04)—Faculty Survey.

Frequency: Survey conducted approximately every four years.

Affected Public: Individuals or households; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,200.

Burden Hours: 510.

Abstract: The fourth cycle of the NSOPF is being conducted in response to a continuing need for data on faculty and instructional staff at U.S. postsecondary education institutions. Information about these key staff at postsecondary institutions is critical to understanding and explaining the quality of education and research in these institutions. This study will expand the information about faculty and instructional staff in two ways: allowing comparisons to be made over time and examining critical issues surrounding faculty that have developed since the first three studies. This clearance request covers field test and full-scale activities for the second phase of the study—a self-directed WEB or CATI interview with faculty and instructional staff in 2- and 4-year postsecondary institutions. The interview will collect information on the background, responsibilities, workload, salaries, benefits, and attitudes of faculty members.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2146. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also

be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at *Katrina.Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–28868 Filed 11–13–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education, Department of Education

ACTION: Notice of meeting.

SUMMARY: This notice provides the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This notice is published less than 15 days prior to the date of the meeting as a result of special administrative clearances.

Date and Time: November 22, 2002, 12 p.m. to 4 p.m.

ADDRESSES: Hilton Washington Hotel and Towers, 1919 Connecticut Avenue, NW., Washington, DC 20009. Telephone: (202) 483–3000.

FOR FURTHER INFORMATION CONTACT: Donald Fischer, U.S. Department of Education, 1990 K Street NW., Washington, DC 20006–8544. Telephone: (202) 502–7500 or by e-mail: *donald_fischer@ed.gov*. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Title VII, Part B, section 742 of the Higher Education Amendments of 1998 (20 U.S.C. 1138a). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and procedures for grant awards.

On Friday, November 22, 2002, from 1 p.m. to 4 p.m. the Board will meet in open session. The proposed agenda for the open portion of the meeting will include discussions of the Fund's programs and special initiatives.

On Friday, November 22, 2002, from 12 p.m. to 1 p.m. the meeting will be closed to the public for the purpose of discussing personnel matters associated with the work of the Board. This portion of the meeting will be closed under the authority of section 10(d) of the Federal Advisory Act (Pub. L. 92–463; 5 U.S.C.A. Appendix 2) and under exemptions (2) and (6) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b(c)(2) and (6). The review and discussion of Board personnel matters will relate solely to the internal personnel rules and practices of an agency, and may disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, 8th Floor, 1990 K Street NW., Washington, DC 20006–8544 from the hours of 8 a.m. to 4:30 p.m.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–28864 Filed 11–13–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Orders Granting, Amending and Vacating Authority to Import and Export Natural Gas, Including Liquefied Natural Gas

In the matter of: [FR Docket No. 99–41–NG, 02–65–LNG, 02–66–NG, 02–67–NG, 02–68–NG, 02–69–NG, 02–70–NG, 02–71–NG, 02–72–NG, 02–73–NG, 02–75–LNG, 02–76–NG, 02–74–NG, 02–77–NG, 02–78–NG, Texaco Natural Gas Inc. Duke Energy LNG Marketing and Management Company, Kimball Energy Corporation, Westcoast Gas Services Inc., Westcoast Energy (U.S.) LLC, Pioneer Natural Resources Canada Inc., Nexen Marketing U.S.A. Inc., Alliance Canada Marketing L.P., National Fuel Gas Distribution Corporation, CoEnergy Trading Company, Duke Energy Trading and Marketing, L.L.C., TransCanada Energy Ltd., WPS Energy Services, Inc., Cannat Energy Inc., WPS Energy Services of Canada Corp.,

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during October 2002, it issued Orders granting, amending and vacating authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 7, 2002.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix—Orders Granting, Amending and Vacating Import/Export Authorizations

Order No.	Date issued	Importer/Exporter FE docket No.	Import volume	Export volume	Comments
1488-A	10–4–02	Texaco Natural Gas Inc. 99–41–NG.	.....	.....	Vacate blanket authority to export of natural gas from Mexico. —
1813	10–4–02	Duke Energy LNG Marketing and Management Company, 02–65–LNG.	700 Bcf	.....	Import LNG from various international sources beginning on October 4, 2002, and extending through October 3, 2004.
1814	10–7–02	Kimball Energy Corporation, 02–66–NG.	75 Bcf	.....	Import natural gas from Canada, beginning on April 1, 2002, and extending through March 31, 2004.
1815	10–8–02	Westcoast Gas Services Inc., 02–67–NG.	200 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on December 1, 2002, and extending through November 30, 2004.
1816	10–8–02	Westcoast Energy (U.S.) LLC, 02–68–NG.	200 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on December 1, 2002, and extending through November 30, 2004.
1817	10–10–02	Pioneer Natural Resources Canada Inc., 02–69–NG.	76.8 Bcf	.....	Import natural gas from Canada, beginning on October 30, 2002, and extending through October 29, 2004.
1818	10–23–02	Nexen Marketing U.S.A. Inc., 02–70–NG.	200 Bcf		200 Import and export a combined total of natural gas from and to Canada and Mexico, beginning on January 1, 2003, and extending through December 31, 2004.
1819	10–24–02	Alliance Canada Marketing, 02–71–NG.	69.535 Bcf	.....	Import natural gas from Canada, L.P. beginning on November 13, 2002, and extending through November 12, 2004.
1820	10–24–02	National Fuel Gas Distribution Corporation, 02–72–NG.	33.5 Bcf	.....	Import and export a combined total of natural gas from and to Canada, beginning on January 28, 2003, extending through January 27, 2005.
1821	10–24–02	CoEnergy Trading Company, 02–73–NG.	150 Bcf	100 Bcf	Import and export natural gas from and to Canada, beginning on September 30, 2002, and extending through September 29, 2004.
1822	10–28–02	Duke Energy Trading and Marketing, L.L.C., 02–75–LNG.	900 Bcf		Import and export natural gas, including liquefied natural gas, from and to Canada and Mexico, and to import liquefied natural gas from other countries, up to a combined total, beginning on October 31, 2002, and extending through October 30, 2004.
1823	10–28–02	TransCanada Energy Ltd. 02–76–NG.	700 Bcf	300 Bcf	Import natural gas from Canada, and export a combined total of natural gas to Canada and Mexico, beginning on November 1, 2002, and extending through October 31, 2004.
1824	10–29–02	WPS Energy Services, Inc. 02–74–NG.	100 Bcf	50 Bcf	Import and export natural gas from and to Canada, beginning on November 1, 2002, and extending through October 31, 2004.
1825	10–29–02	Cannat Energy Inc., 02–77–NG.	190 Bcf	.....	Import natural gas from Canada, beginning on December 1, 2002, and extending through November 30, 2004.
1826	10–30–02	WPS Energy Services of Canada Corp., 02–78–NG.	100 Bcf	50 Bcf	Import and export natural gas from and to Canada, beginning on November 1, 2004, and extending through October 31, 2002.

[FR Doc. 02–28895 Filed 11–13–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–561–002]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

November 7, 2002.

Take notice that on November 4, 2002, CenterPoint Energy Gas Transmission Company (CEGT), formerly Reliant Energy Gas Transmission Company, tendered for filing its compliance filing in conformity with the order of the Commission issued on October 25, 2002, 101 FERC ¶ 61,085 (2002) and the Commission's unpublished letter order dated November 1, 2002.

CEGT states that a copy of this filing has been served on each person designated on the official service list in Docket No. RP02–561–001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29008 Filed 11–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–088]

Centerpoint Energy Gas Transmission Company; Notice of Withdrawal of Tariff Filing

November 7, 2002.

Take notice that on November 1, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing a notice that it was withdrawing tariff sheets filed October 18, 2002, in this docket. Such sheets were filed to implement two new negotiated rate transactions to be effective November 1, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29010 Filed 11–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–396–000 and PF01–1–000]

Greenbrier Pipeline Company, LLC; Notice of Site Visit

November 7, 2002.

On November 20, 2002, the staff of the Office of Energy Projects will conduct a site visit of Greenbrier Pipeline Company, LLC's Greenbrier Pipeline Project in North Carolina and Virginia. The project area will be inspected by automobile and on foot, as appropriate.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. For additional information about the site visit, contact the Commission's Office of External Affairs at 1 866 208–FERC (3372).

Magalie R. Salas,

Secretary.

[FR Doc. 02–29006 Filed 11–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–562–002]

Mississippi River Transmission Corporation; Notice of Compliance Filing

November 7, 2002.

Take notice that on November 4, 2002, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing its compliance filing in conformity with the order of the Commission issued on October 25, 2002, 101 FERC ¶ 61,080 (2002) and the Commission's unpublished letter order dated November 1, 2002.

MRT states that a copy of this filing has been served on each person designated on the official service list in Docket No. RP02–562–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29009 Filed 11–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–408–001]

Sabine Pipe Line LLC; Notice of Compliance Filing

November 7, 2002.

Take notice that on November 5, 2002, Sabine Pipe Line LLC (Sabine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective October 1, 2002:

First Revised Sheet No.
226 First Revised Sheet No. 226A
First Revised Sheet No. 226B
First Revised Sheet No. 226C
Substitute Third Revised Sheet No. 297
Substitute Third Revised Sheet No. 298

Sabine states that the tariff sheets are being filed to comply with the directives of the Commission's Letter Order issued September 27, 2002, in Docket No. RP02–408–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29007 Filed 11–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–116]

Tennessee Gas Pipeline Company; Notice of Negotiated Rates

November 7, 2002.

Take notice that on November 4, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a notice of a change in the rates for the October 18, 2001 Negotiated Rate Agreement between Tennessee and NJR Energy Services (Negotiated Rate Agreement) which was accepted by the Commission in Tennessee Gas Pipeline Company, 97 FERC ¶61,248 (2001) (November 30 Order). As agreed to in the November 30 Order, Tennessee is providing notice of a change in rate to be effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29011 Filed 11–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–061]

ANR Pipeline Company; Notice of Negotiated Rates

November 7, 2002.

Take notice that on November 4, 2002, ANR Pipeline Company (ANR) tendered for filing a service agreement, and an amendment to an existing service agreement, between ANR and NG Energy Trading, L.L.C.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29012 Filed 11–13–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7405–7]

Investigator Initiated Grants, Request for Applications, Ecology and Oceanography of Harmful Algal Blooms Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of financial assistance for project assistance.

SUMMARY: The purpose of this notice is to advise the public that the participating agencies are soliciting individual research proposals of up to 3 years duration, and depending on appropriations, multi-disciplinary regional studies of up to 5 years duration, for the Ecology and Oceanography of Harmful Algal Blooms (ECOHAB) program. This program provides support for research on algal species whose populations may cause or result in deleterious effects on ecosystems and human health. Studies of the causes of such blooms, their detection, effects, mitigation, and control in U.S. coastal waters (including estuaries and Great Lakes) are solicited. This document details the requirements for applications for research support that will be considered by the Federal research partnership.

DATES: The deadline for applications is January 28, 2003 by 4:00 EST.

ADDRESSES: Submit the original and eighteen copies of your proposal to Coastal Ocean Program Office, N/SCI2, SSMC#4, 8th Floor, Room 8243, 1305 East-West Highway, Silver Spring, MD 20910. The required forms for applications with instructions are accessible on the Internet at *http://es.epa.gov/ncer/rfa/forms/index.html*. Forms may be printed from this site.

The complete program announcement can be accessed on the Internet at *http://es.epa.gov/ncer/rfa/* under ''Science To Achieve Results (STAR) Research Grants''.

Awards: Final selection of awardees by the participating agencies will be determined on the basis of peer and panel recommendations, applicability of the proposed effort to the interests and objectives of an agency, and the availability of funds. It is anticipated that each award will be made and be administered by a single agency; however, several agencies may participate in providing assistance to individual components of multi-institutional projects. Applicants recommended for funding will be requested to resubmit their applications and may be asked to modify their budgets and/or work plans to comply with special requirements of the particular agency supporting their awards. Awards will be subject to the terms and conditions of the sponsoring agency.

FOR FURTHER INFORMATION CONTACT: Technical Information: Susan Banahan, ECOHAB Coordinator, CSCOR/COP Office, (301) 713–3338/ext 148, E-mail: *susan.banahan@noaa.gov*. Administrative Information: Gina Perovich, EPA/NCER, (202) 564–2248, E-mail: *perovich.gina@epa.gov*.

SUPPLEMENTARY INFORMATION:

Program Goals and Topic Areas

The National Center for Environmental Research/Environmental Protection Agency (EPA); the Coastal Ocean Program and the Office of Protected Resources/National Oceanic and Atmospheric Administration (NOAA)/Department of Commerce; the Directorate for Geosciences, Division of Ocean Sciences/National Science Foundation (NSF); the Office of Naval Research (ONR)/Department of Defense; and the Office of Earth Science/National Aeronautics Space Administration (NASA) are cooperating in an opportunity for investigators to propose activities to address fundamental ecological and oceanographic questions related to the national harmful algal bloom (HAB) problem.

Proposals are encouraged in the following areas: (1) The prevention, control, and mitigation of HABs and their impacts; (2) the transition of current biophysical models for HABs in specific regions into operational HAB forecasts; (3) biological and physical oceanographic regional studies that include the development of linked biophysical models of bloom development and transport; and (4) studies addressing gaps in general knowledge of HAB phenomena. These special emphasis areas are described in greater detail in the complete program announcement (see **ADDRESSES** in this announcement).

ECOHAB will support projects ranging from laboratory studies by individual investigators or small teams, up to larger teams of investigators conducting coordinated, well-integrated, multi-disciplinary regional field programs. For individuals and small teams, support may be requested for 1–3 years duration. Projects focused on multi-disciplinary regional studies may request support for up to 5 years duration. However, the size and duration of the latter studies are dependent on appropriations, and potential applicants are encouraged to correspond with the ECOHAB Coordinator (see **CONTACTS** in this announcement) prior to preparation of proposals.

Eligibility: Institutions of higher education and not-for-profit institutions located in the U.S., and state or local governments, are eligible under all existing authorizations. Some participating agencies are authorized to make awards to international institutions, and commercial organizations located in the U.S. Federal agencies and laboratories may be eligible, but will be required to submit certifications or documentation which clearly show that they have specific legal authority to receive funds from another Federal agency in excess of their appropriations. Funding for salaries of full time Federal employees will be in accord with individual agency policies. Applications from non-Federal and Federal applicants will evaluated under the same review/selection process. Proposals from non-Federal applicants that are selected for funding will be funded through a project grant or cooperative agreement under the terms of this announcement. Proposals from Federal agencies or laboratories deemed acceptable and selected for funding will be funded through a medium other than a grant or cooperative agreement, such as inter- or intra-agency transfers, where legal authority exists for such funding. Note that this announcement is not proposing to procure goods and services from Federal applicants; therefore the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

How to Apply: The original and eighteen (18) copies of the fully developed application (19 in all) and one (1) additional copy of the abstract, prepared in accordance with the full announcement, must be received by NOAA no later than 4:00 P.M. Eastern Time on the closing date, January 28, 2003.

Program Authorities: For COP: 33 U.S.C. 883d and Pub. L. 105–383; for Office of Protected Resources/NOAA: 16 U.S.C. 1382 and 16 U.S.C. 1421a; EPA: 33 U.S.C 1251 *et seq.* and 40 CFR parts 30 and 40; for NSF: 42 U.S.C. 1861 *et seq.*; for ONR: 10 U.S.C 2358 as

amended and 31 U.S.C 6304; and for NASA: 14 CFR part 1260.

Dated: October 29, 2002.

Catalog of Federal Domestic Assistance (CFDA) Numbers. 11.478 for the Coastal Ocean Program; 11.472 for NOAA/Office of Protected Resources; 66.500 for the Environmental Protection Agency; 47.050 for the National Science Foundation, and 12.300 for the Office of Naval Research.

John C. Puzak,

Acting Director, National Center for Environmental Research.

[FR Doc. 02–28921 Filed 11–13–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0059; FRL–7277–4]

Endocrine Disruptor Methods Validation Subcommittee Under the National Advisory Council for Environmental Policy and Technology; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing a 2–hour teleconference meeting of the Endocrine Disruptor Methods Validation Subcommittee (EDMVS), a subcommittee under the National Advisory Council for Environmental Policy and Technology (NACEPT), a Federal advisory committee. The EDMVS will provide technical advice on a fish lifecycle assay detailed review paper presented by the Endocrine Disruptor Screening Program (EDSP). The upcoming teleconference meeting is open to the public.

DATES: The teleconference meeting will be held on Wednesday, December 4, 2002, from 10 a.m. to noon, eastern standard time.

ADDRESSES: The meeting will originate at RESOLVE, 1255 23rd St., NW., Suite 275, Washington, DC.

To participate in the EDMVS teleconference meeting, or to request special accommodations, including wheelchair access, one should contact the Designated Federal Official (DFO) under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Jane Smith, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8476; fax number: (202) 564–8483; e-mail address: *smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest if you produce, manufacture, use, consume, work with, or import pesticide chemical and other substances etc. To determine whether you or your business may have an interest in this notice you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), 21 U.S.C. 346A (p) and amendments to the Safe Drinking Water Act (SDWA) (Public Law 104–182), 42 U.S.C. 300j–17. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0059. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*, or through the EDSP Web site for the EDMVS at *http://www.epa.gov/scipoly/oscpendo/edmvs.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. How Can I Request to Participate in this Meeting?

You may submit a request to participate in the meeting to the DFO listed under **FOR FURTHER INFORMATION CONTACT**. You can request special accommodations by electronic mail, telephone, fax, or in person. Seating is on a first-come basis. We would normally accept requests by mail, but in this time of delays in delivery of Federal government mail due to health and security concerns, we can not assure your request would arrive in a timely manner. Do not submit any information in your request that is considered CBI. Your request must be received by EPA on or before November 27, 2002. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0059, in the subject line on the first page of your request.

1. *Electronically*. You may submit your request by e-mail to oppt-ncic@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0059, in the subject line on the first page of your request.

2. *By telephone or fax*. Contact Jane Smith, the person listed under **FOR FURTHER INFORMATION CONTACT.**

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) to EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0059. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, 8 a.m. to noon and 2 p.m. to 4 p.m., excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

II. Background

In 1996, through enactment of FQPA, which amended the FFDCA, Congress directed EPA to develop a screening program, using appropriate validated

test systems and other scientifically relevant information, to determine whether certain substances may have hormonal effects in humans. In 1996, EPA chartered a scientific advisory committee, the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), under the authority of the Federal Advisory Committee Act (FACA) to advise it on establishing a program to carry out Congress' directive. EDSTAC recommended a multi-step approach including a series of screens (Tier I Screens) and tests (Tier II Tests) for determining whether a chemical substance may have an effect similar to that produced by naturally occurring hormones. EPA adopted many of EDSTAC's recommendations in the program that it developed, the EDSP, to carry out Congress' directive.

EDSTAC also recognized that there currently are no validated testing systems for determining whether a chemical may have an effect in humans that is similar to an effect produced by naturally occurring hormones. Consequently, EPA is in the process of developing and validating the screens and tests that EDSTAC recommended for inclusion in the EDSP. In carrying out this validation exercise, EPA is working closely with, and adhering to the principles of the Interagency Coordinating Committee for the Validation of Alternate Methods (ICCVAM). EPA also is working closely with the Organization for Economic Cooperation and Development's (OECD) Endocine Testing and Assessment Task Force to validate and harmonize endocrine screening tests of international interest.

Finally, to ensure that EPA has the best and most up-to-date advice available regarding the validation of the screens and tests in the EDSP, EPA recently chartered EDMVS of the NACEPT. EDMVS provides independent advice and counsel to the Agency through NACEPT, on scientific and technical issues related to validation of the EDSP Tier I screens and Tier II tests, including advice on methods for reducing animal use, refining procedures involving animals to make them less stressful, and replacing animals where scientifically appropriate.

EDMVS has met five times since its establishment in September 2001.

The objectives of the October 2001 meeting (docket control number OPPTS–42212D) were for EPA to provide:

1. An overview of EPA's EDSP.
2. Background information on test protocol validation and approaches.
3. For the EDMVS to develop a clear understanding of their scope, purpose and operating procedures.
4. For the EDMVS and the EDSP to determine the next steps.

The objectives of the December 2001 meeting (docket control number OPPTS–42212E) were for the EDMVS to provide input and advice on:

1. EDMVS's mission statement and work plan.
2. The *in utero* through lactation assay detailed review paper.
3. The pubertal assay study design for the multi-dose and chemical array protocols.
4. The mammalian 1-generation study design.

The objectives of the March 2002 meeting (docket control number OPPTS–42212F) were for the EDMS to provide input and advice on:

1. EDSP's implementation process and practical aspects of validation.
2. The *in utero* through lactation assay protocol.
3. The fish reproduction assay detailed review paper.
4. Special studies on fathead minnow assays, vitellogenin assay, and avian dosing protocol.
5. The steroidogenesis detailed review paper.
6. The aromatase detailed review paper.
7. A proposed standard suite of chemicals for testing in the Tier I screening assay.
8. The current efforts related to evaluating the relevance of animal data to human health.
9. EPA's approach to addressing low-dose issues.

The objective of the June 2002 teleconference meeting (docket ID number OPPT–2002–0020) was for the EDMVS to provide input and advice on the steroidogenesis detailed review paper.

The objectives of the July 2002 meeting (docket ID number OPPT 2002–0029) were:

1. To review criteria, recommended by EDSTAC and adopted by EDSP for screens.
2. To receive an update on the NICEATM estrogen and androgen receptor binding efforts.
3. To discuss and provide advice on general dose setting issues, and to provide comments and advice on:

- A pubertals—special study—restricted feeding.
- A mammalian 2-generation—draft PTU special study.
- An amphibian metamorphosis detailed review paper.
- An invertebrate detailed review paper.

III. Meeting Objectives for the December 2002 Teleconference Meeting

The objective of the December 2002 teleconference meeting (docket ID number OPPT–2002–0059) is for the EDMVS to provide input and advice on the Tier II fish lifecycle assay detailed review paper.

A list of the EDMVS members and meeting materials are available on our Web site (*http://www.epa.gov/scipoly/oscpendo/edmvs.htm*), and in the EPA Docket.

List of Subjects

Environmental protection, Endocrine disruptors.

Dated: November 4, 2002.

Joseph Merenda,

Director, Office of Science Coordination and Policy, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–28910 Filed 11–13–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0294; FRL–7279–3]

Alpha-cyclodextrin, Beta-cyclodextrin, and Gamma-cyclodextrin; Notice of Filing a Pesticide Petition to Establish an Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of alpha-cyclodextrin, beta-cyclodextrin, and gamma-cyclodextrin in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0294, must be received on or before December 16, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Treva Alston, Minor Use, Inerts, and Emergency Reponse Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; e-mail address: *alston.treva@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2002–0294. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0294. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2002–0294. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2002–0294.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2002–0294. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI, and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 4, 2002.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the Wacker Biochem Corporation and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

PP 2E6514

Summary of Petitions

EPA has received a pesticide petition (2E6514) from Wacker Biochem Corporation, 3301 Sutton Road, Adrian, MI 49221–9397 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.950 to establish an exemption from the requirement of a tolerance for alpha-cyclodextrin (CAS No. 10016–20–3), beta-cyclodextrin (CAS No. 7585–39–9), and gamma-cyclodextrin (CAS No. 17465–86–0) in or on raw agricultural commodities resulting from the use of alpha-, beta-, and gamma-cyclodextrin as ingredients in pesticide formulations used in accordance with good agricultural practices. Alpha-cyclodextrin, beta-cyclodextrin, and gamma-cyclodextrin are naturally occurring compounds derived from the degradation of starch by the glucosyltransferase enzyme (CGTase). D-glucose molecules that are formed by the digestion of starch are joined ''head-to-tail'' to form alpha-, beta-, and gamma-cyclodextrin which are ring-shaped molecules. Alpha-, beta-, and gamma-cyclodextrin are comprised of six, seven and eight D-glucose units, respectively. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. While no studies have been conducted to evaluate the metabolism of alpha-, beta-, and gamma-cyclodextrin in plants, the metabolic products in plants are anticipated to be

ubiquitous, naturally occurring simple sugars and CO_2. The anticipated plant metabolites are not of toxicological concern.

2. *Analytical method.* An analytical method is not required for enforcement purposes since Wacker Biochem is requesting the establishiment of an exemption from the requirement of a tolerance without any numerical limitation.

B. Toxicological Profile

Alpha-cyclodextrin: The Food & Agriculture Organization/World Health Organization (FAO/WHO) Joint Expert Committee on Food Additives (JECFA) has evaluated alpha-cyclodextrin and in 2001 allocated an acceptable daily intake (ADI) of ''not specified.'' This is the most desirable ADI allocation issued by JECFA.

Beta-cyclodextrin: A GRAS (generally recognized as safe) petition was submitted by Roquette America Inc/ American Maize-Products Co. for use as a formulation aid in the production of dry flavoring mixes (February 3, 1992) and for use as a flavor protectant (September 20, 1996). A self-affirmation of beta-cyclodextrin as a flavor carrier in foods was completed by Cerestar USA on February 4, 1998. Wacker Biochem Corporation has submitted to the FDA an independent GRAS determination for beta-cyclodextrin for use as a flavor carrier or protectant in baked goods prepared from dry mixes, breakfast cereal, chewing gum, compressed, candies, gelatins and puddings, flavored coffee and tea, processed cheese products, dry mix for beverages, flavored savory snacks and crackers, dry mixes for soups (GRAS Notice No. 74). FDA has not yet completed its review of the self-affirmation.

Gamma-cyclodextrin: Wacker Biochem Corporation has determined that gamma-cyclodextrin is generally recognized as safe (GRAS) when used as a stabilizer, emulsifier, carrier and formulation aid in foods.

The toxicology and metabolism data relevant to the proposed tolerance exemption are summarized in Table 1.

TABLE 1.—TOXICITY AND METABOLISM

Study	Cyclo-dextrin	Result
Acute oral toxicity	Alpha-	LD_{50} >10,000 mg/kg (rat)
	Beta-	LD_{50} >12,000 mg/kg (rabbit)
	Gamma-	LD_{50} >8,000 mg/kg (rat)
Acute dermal toxicity		No data are available
Acute inhalation toxicity		No data are available
Primary eye irritation	Alpha-	Crystalline form: Eye irritant, but not corrosive 50% suspension: Non-irritant
	Beta-	Slight irritant
	Gamma-	Non-irritant
Primary dermal irritation	Alpha-	Non-irritant
	Beta-	Non-irritant
Dermal sensitization	Alpha-	Non-sensitizer
	Beta-	Non-sensitizer
	Gamma-	Non-sensitizer
28–Day feeding study: rodent	Alpha-	NOEL = 5% in the diet
	Beta-	NOEL = 5% in the diet
90–Day feeding study: rat	Alpha-	NOAEL = 20% in diet highest dose tested (HDT)
	Beta-	NOAEL = 400 mg/kg/day by gavage
	Gamma-	NOAEL = 20% in diet HDT
90–Day feeding study: dog	Alpha-	NOAEL = 20% in diet HDT
	Beta-	NOEL = 2.5% in diet LOEL = 5% in diet. Hematology and clinical chemistryeffects observed indicated slight toxicity
	Gamma-	NOAEL = 20% in diet HDT

TABLE 1.—TOXICITY AND METABOLISM—Continued

Study	Cyclo-dextrin	Result
Subchronic dermal toxicity		No data are available
Chronic feeding and oncogenicity	Beta-	1–year dog NOAEL = 1% in diet = 350 mg/kg/day LOAEL = 2.5% in diet = 925 mg/kg/day Increased levels of protein were observed in urine 2-year rat: NOEL for oncogenicity = 6% in diet Small percentage is absorbed by the intestinal walls and causes kidney damage. Beta-cyclodextrin is not degraded in the small intestine. In the large intestine, it undergoes bacterial degradation, leading to gas generation and diarrhea
Teratology study: rodent	Alpha-	Not teratogenic, embryotoxic or fetotoxic at doses up to 20% of diets in both rats and rabbits HDT
	Beta-	Not teratogenic, embryotoxic or fetotoxic at 5,000 mg/kg/day in rats HDT and at 1,000 mg/kg/day in rabbits HDT
	Gamma-	Not teratogenic, embryotoxic or fetotoxic at doses up to 20% of diets in both rats and rabbits HDT
2-Generation reproduction	Beta-	NOAEL in rats = 1% in diet = 700 mg/kg/day LOAEL in dams and offspring = 2.5% in the diet
Gene mutation test	Alpha-	Negative Ames test
	Gamma-	Negative Ames test
Structural chromosomal aberration test	Beta-	Negative in rats at dose of 2% in diet
Other genotoxic effects	Alpha-	Negative micronucleus test
	Gamma-	Negative micronucleus test
Metabolism (oral dosing)	Alpha	Absorption: 2% dose absorbed Distribution: Liver (>0.05% dose) and kidney (>0.01% dose) Metabolism: Extensively and predominantly metabolized to $C0_2$ by intestinal flora Excretion: 60% dose expelled as CO_2 26–33% dose incorporated 7–14% dose excreted in urine and feces
	Beta-	Absorption: No significant absorption as intact molecule. Absorption as sugars is similar to that of glucose; occurs via passive transport Distribution: Max. 0.9% in GI tract 60 hours after dosing Metabolism: Hydrolysis to open chain dextrins and glucose occurs in the large intestine by intestinal flora Excretion: 66.8% dose as CO_2 in expired air within 23 hours of dosing. 0.6% to 4% in feces within 60 hours of dosing
	Gamma-	Absorption: >0.1% as intact molecule Metabolism: Rapid and total degradation to glucose in the upper intestinal tract by intestinal flora Excretion: 60% dose expelled as CO_2 37% dose incorporated 3% dose excreted in urine and feces

1. *Metabolite toxicology*. Alpha-, beta-, and gamma-cyclodextrin are metabolized to simple sugars and CO_2. These metabolites are also metabolites of the digestion of carbohydrates in the diet and have no significant toxicity.

2. *Endocrine disruption*. Based upon the available data, alpha-, beta-, and gamma-cyclodextrin are not anticipated to disrupt the endocrine system.

C. Aggregate Exposure

1. *Food*. Alpha-cyclodextrin, beta-cyclodextrin, and beta-cyclodextrin are naturally occurring compounds and are used as food additives.

Alpha-cyclodextrin food additive uses include: Carrier; encapsulating agent for food additives, flavorings and vitamins; stabilizer; and absorbent. The ADI is ''not specified.''

Beta-cyclodextrin is used as a flavor carrier or protectant. See Table 2 for a detailed list of uses and the maximum concentrations.

TABLE 2.–MAXIMUM CONCENTRATION OF BETA-CYCLODEXTRIN IN FOODS

Beta-Cyclodextrin Use	Maximum Concentration
Baked goods prepared from dry mixes breakfast cereal chewing gum compressed candies	2%
Gelatins and puddings flavored coffee and tea processed cheese products dry mix for beverages	1%
Flavored savory snacks and crackers	0.5%
Dry mixes for soups	0.2%

Gamma-cyclodextrin is used in foods such as bread spreads, frozen dairy desserts, ready to eat dairy desserts, desserts prepared from dry mixes, fruit fillings, cheese and cream fillings, chewing gum, dietary supplements. See Table 3 for a complete list of uses and the maximum concentrations.

TABLE 3.–MAXIMUM CONCENTRATION OF GAMMA-CYCLODEXTRIN IN FOODS

Gamma-Cyclodextrin Use	Maximum Use Concentration
Carrier for flavors, sweeteners and colors	<1%
Dry mixes for beverages	<1%
Dry mixes for soups	<1%
Dry mixes for dressings, gravies, and sauces	<1%
Dry mixes for puddings, gelatins, and fillings	<1%
Instant coffee and instant tea	<1%
Coffee whiteners	<1%
Compressed candies	<1%
Chewing gum	<1%
Breakfast cereals (ready-to-eat)	<1%
Savory snacks and crackers	<1%
Spices and seasonings	<1%
Carrier for vitamins	<1%
For use in dry food mixes and dietary supplements	<90%[1]
Carrier for polyunsaturated fatty acids	
For use in dry food mixes and dietary supplements	<80%[1]
Flavor modifier	
Soya milk	<2%
Stabilizer	
Bread spreads (fat-reduced)	<20%
Frozen dairy desserts	<3%
Baked goods (excl. bread, but incl. dough and baking mixes)	<2%
Bread	<1%
Fruit-based fillings	<3%
Fat-based fillings	<5%

TABLE 3.–MAXIMUM CONCENTRATION OF GAMMA-CYCLODEXTRIN IN FOODS—Continued

Gamma-Cyclodextrin Use	Maximum Use Concentration
Processed cheese	<3%
Dairy deserts (ready-to-eat and prepared from dry mixes)	<3%

[1]Percent by weight of gamma-cyclodextrin relative to the nutrient for which gamma-cyclodextrin is used as a carrier.

The proposed use of alpha-, beta-, and gamma-cyclodextrin as ingredients in pesticide formulations is anticipated to result in no significant additional dietary exposure to alpha-, beta-, and gamma-cyclodextrin.

2. *Drinking water.* Any alpha-, beta-, and gamma-cyclodextrin in drinking water sources is anticipated to degrade to simple sugars and CO_2 that will be used by plants as building blocks for the plant's growth. No significant exposure of alpha-, beta-, and gamma-cyclodextrin via drinking water is anticipated.

3. *Non-dietary exposure.* Cyclodextrins are used extensively in the cosmetic industry. Alpha-, beta-, and gamma-cyclodextrin are too large to be absorbed through the skin, so no significant systemic exposure is anticipated to result from the cosmetic use or other residential uses of alpha-, beta-, and gamma-cyclodextrin.

D. Cumulative Effects

Alpha-, beta-, and gamma-cyclodextrin have no significant toxic effects for consideration of cumulative effects.

E. Safety Determination

1. *U.S. population.* Alpha-, beta-, and gamma-cyclodextrin are low toxicity, naturally occurring compounds that are use as food additives. The D-glucose building blocks of alpha-, beta-, and gamma-cyclodextrin are also the result of digestion of starchy foods such as bread, rice, potatoes and pasta. Alpha-, beta-, and gamma-cyclodextrin are part of the current U.S. diet, and the proposed new uses of alpha-, beta-, and gamma-cyclodextrin as ingredients in pesticide formulations is not anticipated to contribute significantly to the amount of alpha-, beta-, and gamma-cyclodextrin in the U.S. diet. The proposed new use of alpha-, beta-, and gamma-cyclodextrin for use as an inert ingredient in pesticide formulations has a reasonable certainty of no harm to the U.S. population.

2. *Infants and children.* Alpha-, beta-, and gamma- cyclodextrin have no significant toxic effects that are specific to infants or children. The proposed new uses of alpha-, beta-, and gamma-cyclodextrin as ingredients in pesticide formulations has a reasonable certainty of no harm to infants or children.

F. International Tolerances

Alpha-cyclodextrin: The FAO/WHO JECFA has evaluated alpha-cyclodextrin and in 2001 allocated an ADI of ''not specified.'' This is the most desirable ADI and is limited to low toxicity compounds.

Beta-cyclodextrin: A request was submitted to the CODEX Alimentarius Commission for additive clearance in the General Standard on Food Additives (INS No. 459) at a maximum level of 50,000 milligrams/kilogram (mg/kg) in food category 5.3, for chewing gum. A new monograph for beta-cyclodextrin has been published in the First Supplement to the Fourth Edition of the Food Chemicals Codex. Beta-cyclodextrin is published in Annex V of the Official Journal of the European Communities-Food Additives as a carrier only for food additives up to 1 gram/kilogram food. An ADI of 5 mg/kg body weight was established at the February 1995 joint FAO/WHO meeting of the expert committee on food additives and is published in WHO Food Additive Series 35.

Gamma-cyclodextrin: The FAO/WHO JECFA has evaluated alpha-cyclodextrin and in 2,000 (53rd meeting) allocated an ADI of ''not specified.'' This is the most desirable ADI and is limited to low toxicity compounds.

[FR Doc. 02–28909 Filed 11–13–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 7, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 13, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0960.

Title: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 1,407.

Estimated Time per Response: 0.5 to 1.0 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 63,992 hours.

Total Annual Costs: None.

Needs and Uses: In response to the FCC's Report and Order in *Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals,* CS Docket No. 00–2, FCC 00–38 (rel. November 2, 2000), parties filed petitions to reconsider certain aspects of the satellite program exclusivity rules adopted therein. In its Order on Reconsideration in the same docket, FCC 02–287 (rel. October 17, 2002), published elsewhere in this issue of the **Federal Register**, the Commission denied petitions to extend the phase-in period for implementation of the rules, and also maintained the application of the sports blackout rule to satellite carriage of network stations. The Commission revised section 76.122(c)(2), pertaining to identification of information about programming to be deleted, so that the satellite rule conforms to the cable rules. In addition, the Commission clarified and amended section 76.127(c), pertaining to notifications of deletions for sports broadcasts, to permit sports rights holders with a discernable season to submit blackout notifications for an entire season, but also to establish a date certain by when those notifications must be received by satellite carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–28893 Filed 11–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–2751]

Verification OF ITFS, MDS, and MMDS License Status and Pending Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the Federal Communications Commission, (Commission), Wireless Telecommunications Bureau, seeks to verify ITFS, MDS, and MMDS licensing information contained in the Broadband Licensing System in preparation for the transition to the Universal Licensing System (ULS). The Commission is requesting that all ITFS, MDS and MMDS licensees and applicants review and verify licensing information set forth in the Tables released for public inspection. Also, the Commission is requesting that ITFS, MDS, and MMDS licensees and applicants submit written requests for continued processing for all pending applications filed prior to March 25, 2002. Finally, at the Commission will close the review and verification period on December 17, 2002.

DATES: Comments are due on or before December 16, 2002 and reply comments are due on or before December 30. 2002.

ADDRESSES: Federal Communications Commission 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* Supplementary Information for filing instructions.

FOR FURTHER INFORMATION CONTACT: Licensees and applicants should visit *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html* in order to review the tables. For all questions regarding technical aspects of public access to BLS data, contact the FCC Technical Support Hotline: Call (202) 414–1250 (TTY (202) 414–1255) or e-mail to *ulscomm@fcc.gov.* The hotline is available Monday through Friday 8 a.m. to 6 p.m. Eastern Time. All calls to the hotline are recorded.

For all questions regarding legal matters relating to this Public Notice, contact John J. Schauble, Chief, Policy and Rules Branch, Kim Varner, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, or Stephen Svab, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, at (202) 418–0680.

For all questions regarding data corrections, and how to file those corrections, contact the Licensing Support Hotline at 1–888–225–5322 and select option 2.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice,* DA 02–2751, released on October 18, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

On March 25, 2002, the Wireless Telecommunications Bureau (WTB) became responsible for the administration of the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS) (collectively, the Services). Prior to March 25, 2002, the Services were administered by the former Mass Media Bureau using the Broadband Licensing System (BLS) as the licensing database for the Services. As part of the transition process, WTB will be migrating these services to the Universal Licensing System (ULS) that governs all WTB services. In so doing, WTB seeks to ensure that all information contained within the BLS is accurate, current and comprehensive. In order to facilitate this process, WTB is requesting that all ITFS, MDS and MMDS licensees and applicants review and verify important licensing information as explained in this public notice. This review will assist WTB in ensuring the integrity of the data in the database and permit a smooth transition of the data to WTB's licensing database. In addition, in order to efficiently process all pending applications, petitions, and other requests, WTB is requesting that applicants and petitioners re-affirm, in writing, that continued processing of certain applications and petitions, as detailed below is desired.

It is very important that all ITFS, MDS, and MMDS licensees and applicants carefully review this public notice and the tables of licensing information described below. Failure to follow the instructions in this public notice may result in the cancellation of licenses and/or dismissal of pending applications.

ITFS/MDS/MMDS Licenses

WTB is making available for public inspection four tables of licensing information at: *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html.* A hard copy of each table is also available for public inspection at the Commission's Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Table A lists all ITFS licenses including main station and two-way stations shown in BLS. Table B lists all MDS and MMDS licenses, including Basic Trading Area authorizations, main stations and two-way stations contained in BLS. Table C lists all granted modifications and construction permits for ITFS for which certifications of construction have not yet been filed. Table D lists all granted MDS/MMDS modifications and conditional licenses for which certifications of construction have not yet been filed. Tables A, B, C, and D

contain the following information for each listed license: license status, latest license status date, renewal expiration date, channel(s), location of the facility, construction expiration date of each unconstructed station and additional administrative information concerning the licenses. Technical information is not included in these tables.

In addition, for licensed stations only, additional technical information concerning those licenses is available at *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html.* Licensees are requested to review this data for their licenses and ascertain that the information is correct (including verification that the specification of North American Datum 1927 (NAD27) or North American Datum 1983 (NAD83) for all coordinates on the license).

Within sixty days of the release date of this public notice, licensees are requested to review the referenced tables and to review the technical information pertaining to their licenses and submit any necessary corrections. Specifically, licensees are instructed to verify, under penalty of perjury, that their respective station licenses, conditional licenses, and construction permits are listed on the appropriate table and that all information (including the technical information available at the above-referenced internet address) is correct. All data corrections submitted should include a cover sheet with the following information: FCC Registration Number, which table the change is being requested for, call sign of the licensed station, Facility ID, and a current contact person (including mailing address, telephone number and e-mail address if available). If the licensee disputes any of the technical information, the licensee should print the technical information from the internet site and make the corrections on that print out. All corrections should be hand-written on the printed copy and submitted in duplicate, along with documents supporting the requested correction.

If the information pertaining to the licenses is accurate, no further action is required. If the license is listed as licensed but operation of the station has been permanently discontinued, the licensee is required to turn the license in for cancellation. If a valid license is not listed on the appropriate table or the licensee believes that it is listed incorrectly as forfeited or cancelled, the licensee must submit, within sixty days of the release of this public notice, a copy of the license. In addition, with the same filing, the licensee must also submit a declaration, signed by an authorized representative of the licensee that the license is valid along with an explanation as to why the license has not been forfeited or cancelled.

If a conditional license or construction permit is listed as an unconstructed station, but a certification of construction has been filed, the licensee is requested to submit an FCC date-stamped copy of that filing or other contemporaneous evidence demonstrating that the certification of construction was timely filed. In addition, with the same filing, the licensee must also submit a declaration, signed by an authorized representative of the licensee that the license is valid along with an explanation as to why the license has not been forfeited or cancelled.

If the information requested previously is being sent via United States Postal Service, licensees must use the following address: Federal Communications Commission, MDS/ITFS Database Corrections, 1270 Fairfield Road, Gettysburg, PA 17325.

Correspondence sent by overnight mail couriers (*e.g.*, Federal Express, United Parcel Service, Airborne), hand-delivery or messenger must be addressed to: Federal Communications Commission, MDS/ITFS Database Corrections, 1120 Fairfield Road, Gettysburg, PA 17325.

Pending ITFS/MDS/MMDS Applications

WTB is also making available for public inspection two tables of pending ITFS/MDS/MMDS applications on the Commission's internet Web site at *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html.* These tables include all electronically filed pending applications as of October 16, 2002, and all manually filed applications, filed prior to August 1, 2002. A hard copy of each table is also available for public inspection at the Commission's Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Table E lists all pending ITFS applications. Table F lists all pending MDS/MMDS applications. Tables E and F contain the following information for each pending application: file number, application purpose, facility ID, location, channel and additional administrative information concerning the pending application. Technical information is not included in the tables. Technical information for pending applications for new stations or a modification of license can be queried on the Internet at *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html.* These applications may be queried by using the facility ID.

Within sixty days of the release of this public notice, ITFS/MDS/MMDS licensees and applicants are requested to review and, where appropriate, verify the attached pending application tables and technical information for the following: (1) That the pending application(s) is/are listed on the appropriate table; (2) that the information listed on the table for the pending application is accurate and complete; (3) that the associated technical data for a pending application requesting a new station or a modified station is correct (including verification that the specification of NAD27 or NAD83 for all coordinates on the application is correct); and (4) for all applications filed prior to March 25, 2002, that Commission action on the pending application(s) is still requested. All data corrections submitted should include a cover sheet with the following information: FCC Registration Number, which table the change is being requested for, call sign of the licensed station, Facility ID, and a current contact person (including mailing address, telephone number and e-mail address if available).

If the information for the application is accurate and the application was filed after March 25, 2002, no further action is required. If, on the other hand, a pending application is not listed in the appropriate table and processing is requested, the applicant, by its authorized representative, is requested to submit within sixty days of the release of this public notice two FCC date-stamped copies of the omitted application.

In addition, for pending applications filed prior to March 25, 2002, the applicant must: (1) Affirm, in writing, within sixty days of the release of this public notice that continued processing of the application is requested by contacting the Commission at the addresses listed below in this subsection, and (2) submit a copy of the application with the written affirmation request.

If an application is listed as pending, but has in fact been granted, dismissed or withdrawn, the licensee or applicant is requested within sixty days of the release of this public notice to submit updated information concerning the status of the application. If the application has been granted, the licensee or applicant must submit a copy of the associated license or other authorization, or other documentation that demonstrates that the application has been granted.

If an applicant/licensee disputes any of the technical information of a pending application for a new station or

the modification of a station, the applicant/licensee should print the technical information from the internet site. All corrections should be hand-written on the printed copy and submitted in duplicate, along with documents supporting the requested correction.

Applicants sending information via the United States Postal Service, should use the following address: Federal Communications Commission, MDS/ITFS Database Corrections, 1270 Fairfield Road, Gettysburg, PA 17325.

Applicants sending information via overnight mail couriers, hand-delivery or messenger should use the following address: Federal Communications Commission, MDS/ITFS Database Corrections, 1120 Fairfield Road, Gettysburg, PA 17325.

Termination of Review Period

At the end of the sixty-day review period, WTB will evaluate and update, where appropriate, all information received in response to this public notice. For any applications for which written affirmations requesting further processing have not been received, those applications will be dismissed without prejudice. At the conclusion of this review period, WTB will not entertain any future claims that licenses, conditional licenses, construction permits, applications, or pleadings may have been omitted from the BLS or accept any additional information from entities seeking to reinstate licenses, conditional licenses, or construction permits or prosecute dismissed applications and pleadings or applications that are dismissed pursuant to this Public Notice.

Contact Information

Licensees and applicants should visit *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html* in order to review the tables. For all questions regarding technical aspects of public access to BLS data, contact the FCC Technical Support Hotline: Call (202) 414–1250 (TTY 202–414–1255) or e-mail to *ulscomm@fcc.gov*. The hotline is available Monday through Friday 8 a.m. to 6 p.m. Eastern Time. All calls to the hotline are recorded.

For all questions regarding legal matters relating to this Public Notice, contact John J. Schauble, Chief, Policy and Rules Branch, Kim Varner, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, or Stephen Svab, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, at (202) 418–0680.

For all questions regarding data corrections, and how to file those corrections, contact the Licensing Support Hotline at 1–888–225–5322 and select option 2.

FCC Notice Required by the Paperwork Reduction Act

The public reporting for this collection of information is estimated to average .50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD–PERM, Paperwork Reduction Project (3060–0893), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to *jboley@fcc.gov*. Please do not Send your Response to this Address.

Remember—You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060–0893.

The Foregoing Notice is Required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–28890 Filed 11–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 9:48 a.m. on Friday, November 8, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Director John M. Reich (Appointive), concurred in by Julie L. Williams, acting in the place and stead of John D. Hawke, Jr., (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Subshine Act'' (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 8, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–29020 Filed 11–12–02; 10:45 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, November 14, 2002,

MEETING OPEN TO THE PUBLIC: The following item was added to the agenda: Report of the Audit Division—Nader 2000 Primary Committee, Inc.

DATE & TIME: Tuesday, November 19, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, November 21, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Final Rules and Explanation and Justification on Disclaimers, Fraudulent

Solicitations, Personal Use of Campaign Funds, and Civil Penalties.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–29101 Filed 11–12–02; 3:13 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010776–122.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd, APL Co. Pte Ltd., A.P. Moller-Maersk Sealand, Kawasaki Kisen Kaisha, Ltd., Hapag-Lloyd Container Linie GmbH, Nippon Yusen Kaisha, Orient Overseas Container Line Limited, P&O Nedlloyd Limited, Mitsui O.S.K. Lines, Ltd., P&O Nedlloyd B.V.

Synopsis: The amendment extends the current suspension for an additional six months through May 1, 2003.

Agreement No.: 011375–060.

Title: The Trans-Atlantic Conference Agreement.

Parties: A.P. Moller-Maersk Sealand, Atlantic Container Line AB, Hapag-Lloyd Container Linie GmbH, Mediterranean Shipping Company, S.A., Nippon Yusen Kaisha, Orient Overseas Container Lines Limited, P&O Nedlloyd Limited.

Synopsis: The amendment renews the conference's Temporary Slot Assistance Program for the period from the last week of December 2002 through the second week of February 2003.

Agreement No.: 201048–001.

Title: Philadelphia Regional Port Authority and Delaware River Stevedores, Inc. Lease Agreement.

Parties: Philadelphia Regional Port Authority, Delaware River Stevedores, Inc.

Synopsis: The agreement amendment restates the entire agreement and revises the minimum vessel calls and tonnage requirements.

Agreement No.: 201113–002.

Title: Non-Exclusive Preferential Assignment Agreement Between the Port of Oakland and SSA Terminals, LLC.

Parties: Port of Oakland, SSA Terminals, LLC.

Synopsis: The amendment clarifies the term of the agreement in view of certain events that have taken place.

By Order of the Federal Maritime Commission.

Dated: November 8, 2002.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–28911 Filed 11–13–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Sr. Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. First Interstate Bancsystem, Inc., Billings, Montana; to acquire 100 percent of the voting shares of Silver Run Bancorporation, Inc., Red Lodge, Montana, and thereby indirectly acquire voting shares of United States National Bank of Red Lodge, Red Lodge, Montana.

Board of Governors of the Federal Reserve System, November 6, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–28748 Filed 11–13–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of September 24, 2002

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on September 24, 2002.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1¾ percent.

By order of the Federal Open Market Committee, November 7, 2002.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 02–28874 Filed 11–13–02; 8:45 am]

BILLING CODE 6210–01–M

[1] Copies of the Minutes of the Federal Open Market Committee meeting on September 24, 2002, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0094]

Determination of Regulatory Review Period for Purposes of Patent Extension; COLAZAL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for COLAZAL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Regulatory Policy Staff (HFD–013), Food and Drug dministration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product COLAZAL (balsalzide disodium). COLAZAL is indicated for treatment of mildly to moderately active ulcerative colitis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for COLAZAL (U.S. Patent No. 4,412,992) from Biorex Laboratories Unlimited, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of COLAZAL represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for COLAZAL is 2,950 days. Of this time, 1,828 days occurred during the testing phase of the regulatory review period, while 1,122 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: June 22, 1992. The applicant claims June 9, 1992, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 22, 1992, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: June 23, 1997. FDA has verified the applicant's claim that the new drug application (NDA) for COLAZAL (NDA 20–610) was initially submitted on June 23, 1997.

3. *The date the application was approved*: July 18, 2000. FDA has verified the applicant's claim that NDA 20–610 was approved on July 18, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by January 13, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 13, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information is to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 24, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–28882 Filed 11–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0420]

Determination of Regulatory Review Period for Purposes of Patent Extension; LOTRONEX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LOTRONEX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce,

for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Regulatory Policy Staff (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product LOTRONEX (alosetron hydrochloride). LOTRONEX is indicated for the treatment of irritable bowel syndrome in female patients whose predominant bowel symptom is diarrhea. The safety and effectiveness in men have not been established. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LOTRONEX (U.S. Patent No. 5,360,800) from Glaxo Wellcome, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LOTRONEX represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LOTRONEX is 3,564 days. Of this time, 3,339 days occurred during the testing phase of the regulatory review period, while 225 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: May 10, 1990. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 10, 1990.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: June 30, 1999. FDA has verified the applicant's claim that the new drug application (NDA) for LOTRONEX (NDA 21–107) was initially submitted on June 30, 1999.

3. *The date the application was approved*: February 9, 2000. FDA has verified the applicant's claim that NDA 21–107 was approved on February 9, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,076 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by January 13, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 13, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information is to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 24, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–28883 Filed 11–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0091]

Determination of Regulatory Review Period for Purposes of Patent Extension; ACOVA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ACOVA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug

product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ACOVA (argatroban). ACOVA is an anticoagulant for prophylaxis or treatment of thrombosis in patients with heparin-induced thrombocytopenia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ACOVA (U.S. Patent No. 5,214,052) from Texas Biotechnology Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 3, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ACOVA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ACOVA is 4,022 days. Of this time, 2,971 days occurred during the testing phase of the regulatory review period, while 1,051 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: June 28, 1989. The applicant claims January 12, 1989, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 28, 1989, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: August 15, 1997. The applicant claims August 20, 1997, as the date the new drug application (NDA) for ACOVA (NDA 20–883) was initially submitted. However, FDA records indicate that NDA 20–883 was submitted on August 15, 1997.

3. *The date the application was approved*: June 30, 2000. FDA has verified the applicant's claim that NDA 20–883 was approved on June 30, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 839 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by January 13, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 13, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information is to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 24, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–28884 Filed 11–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0022]

Determination of Regulatory Review Period for Purposes of Patent Extension; SOLAGE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SOLAGE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Regulatory Policy Staff (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the

actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SOLAGE (mequinol). SOLAGE is indicated for the treatment of solar lentigines. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for SOLAGE (U.S. Patent No. 5,194,247) from Bristol-Myers Squibb Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of SOLAGE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SOLAGE is 2,689 days. Of this time, 1,978 days occurred during the testing phase of the regulatory review period, while 711 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: August 1, 1992. The applicant claims August 3, 1992, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 1, 1992, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: December 30, 1997. FDA has verified the applicant's claim that the new drug application (NDA) for SOLAGE (NDA 20–922) was initially submitted on December 30, 1997.

3. *The date the application was approved*: December 10, 1999. FDA has verified the applicant's claim that NDA 20–922 was approved on December 10, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,365 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by January 13, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 13, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information is to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 24, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–28885 Filed 11–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Meeting To Update Stakeholders on the Progress of the Recreation One-Stop Initiative

Date: Thursday, November 21, 2002.
Registration: 12:30 p.m.–1 p.m.
Meeting: 1 p.m.–4 p.m.
Location: American Institute of Architects (AIA), 1735 New York Avenue NW., Washington, DC 20006.

Background

Recreation.gov (*www.recreation.gov*) is an Internet portal providing one-stop access to federal recreation information. The service, which is hosted by the Interior Department, is a partnership among Federal natural resources agencies, with participation from State and local agencies. Recreation.gov is being expanded to a broader service called Recreation One-Stop. The Administration's E-Government task force selected Recreation One-Stop as one of 24 government-wide Internet projects intended to expand and improve on-line access to government information and services. The goals of the Recreation One-Stop initiative are to improve the quality and availability of recreation information through partnerships, data sharing, and innovative uses of technology.

The Recreation One-Stop Team held a public meeting on March 7, 2002, in Washington, DC to discuss the goals and objectives of the project, and to obtain feedback from stakeholders and interested parties. A summary of the meeting is available on the web at *http://recreation.gov/summary.cfm.*

The project team has taken action on many of the recommendations made at the March 7 meeting. Additional features have been added to the Recreation.gov site, and the project team commissioned an independent report by the Industry Advisory Council (IAC) to identify best practices related to development of data standards and governance of intergovernmental portal projects.

Purpose of Meeting

The purpose of this meeting is to provide the public and our stakeholders with an update on actions taken since the March meeting, and to solicit feedback and suggestions on the next phases of the project.

Topics

Areas to be covered at the meeting include the following:

Update: The Recreation One-Stop Team will provide an overview of actions taken since the last stakeholder meeting, and provide an overview of the IAC best practices study.

Technology: One of the common themes from the March stakeholder meeting was the importance of developing data standards and the importance of data quality and availability. The status of intergovernmental data standards for recreation will be discussed.

Governance: Recreation One-Stop is evolving toward a Federal-State/Public-Private partnership to promote data sharing related to recreational resources. One of the issues to be discussed is the development of an appropriate governance structure for this initiative.

Attendance

This is a public meeting open to anyone interested in learning more about Recreation One-Stop and providing input on the development of the project. For more information, please contact Charlie Grymes at the

Department of the Interior at 202–219–1285. Space is limited; if you plan to attend, please respond by November 14 to Angela Mathews at 202–208–5606. Please let us know if you have special needs.

Other Details

The AIA building is directly behind the Octagon House. The closest Metro stops are Farragut West (Blue and Orange Line) and Farragut North (Red Line). Exit the Metro on the 18th Street side and walk approximately 4 blocks south. Street parking is available, but parking in this area is limited. There is parking available for a fee at the Colonial parking garage at G and 18th St. There are also numerous coffee shops and restaurants in the area.

Dated: November 7, 2002.

Scott Cameron,

Deputy Assistant Secretary, Performance and Management.

[FR Doc. 02–28916 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

National Wildlife Refuge System; Big Game Guide Permits; Solicitations and Extensions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of solicitation of applications for refuge big game guide permits and extension of existing refuge permits.

SUMMARY: The Fish and Wildlife Service is soliciting proposals to conduct commercial big game guide services on National Wildlife Refuges in Alaska for a 5-year period beginning in 2004. We are also providing a 6-month extension of existing big game guide permits.

DATES: The application period opens November 14, 2002. Applications must be received at the address indicated below by 4 p.m., Friday, February 28, 2003.

FOR MORE INFORMATION CONTACT: Tony Booth, U.S. Fish and Wildlife Service, Division of Visitor Services and Communications, 1011 East Tudor Road MS 235, Anchorage, Alaska, 99503; telephone (907) 786–3357; e-mail *tony_booth@fws.gov.*

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service is requesting proposals to conduct commercial big game guide services within designated guide use areas in each of the National Wildlife Refuges in Alaska. The Service will award special use permits to successful applicants authorizing them to provide commercial guide services to the public in specific refuge guide use areas for the period of January 1, 2004, through December 31, 2008. We will award the permits through a competitive selection process in which qualified big game guides may apply for specific refuge areas offered by the Service. Each application or proposal will be evaluated and scored/ranked according to evaluation criteria and selection factors developed by the Service.

The application period will begin on the date specified in the DATES section near the beginning of this notice. We will send a letter to all registered big game guides in the State of Alaska providing information on the guide areas being offered and application instructions. We are also publishing notices in Anchorage and Fairbanks newspapers that provide general circulation in Alaska. Applications are available to any interested party by calling or writing to the above address. Applicants must postmark their proposals or hand deliver them to the above address by Friday, February 28, 2003.

The Service is also providing notice that we are extending the expiration date of existing Alaska National Wildlife Refuge big game guide permits and the competitive guide selection process for 6 months. This 6-month extension will put all permits on a calendar year cycle. The big game guide permits currently in effect for the refuge use areas being offered will expire on June 30, 2003. We are extending the expiration date of these permits to December 31, 2003. We are moving the effective date for new guide permits from July 1, 2003, to January 1, 2004.

The Service issued 12 big game guide permits under the competitive selection process in 1999 to fill vacant guide use areas where we did not renew permits. These permits are slated to expire on June 30, 2004. This notice extends the terms of these permits to December 31, 2004, to make them consistent with the calendar year cycle as well. The new permit cycle will be consistent with most other State and Federal licensing and permitting requirements for Alaska big game guides. The State of Alaska Division of Occupational Licensing administers hunting guide and transporter licenses on a calendar year basis.

The extension in the selection process was also necessary to allow the Service to extend the public review period for the proposed revisions of the evaluation factors and guidance that we will use to score and rank guide applications. This was done in response to public requests, and to provide a longer and more reasonable application period for big game guide permits. The extension of the permitting process will accommodate flexibility to extend the permit application deadline further into the winter, well after the fall hunting season, and thereby allow guides more reasonable time to prepare their applications during the slower time of year for the guiding industry.

Alaska refuge permit regulations (50 CFR part 36.41(e)(10)) require the Service to issue competitively awarded permits for 5-year terms (except where permits are issued to fill vacancies occurring during a scheduled award cycle). The regulations require the refuge manager to renew the permits noncompetitively for 5 additional years, if the permittee applies for the renewal, and has maintained a satisfactory record of performance and complied with all applicable permit terms and conditions. The regulations state that after one renewal the Service will not extend or noncompetitively renew another permit. We are providing 6-month extensions to all existing guide permits, in addition to the 5-year renewals cited above. Therefore, the 6-month extensions require a one time waiver of the Alaska refuge permit regulations.

Dated: August 29, 2002.

David B. Allen,

Regional Director.

[FR Doc. 02–28871 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–090–1610–PG; DBG–0200001]

Notice of Public Meeting: Resource Advisory Council to the Lower Snake River District, Bureau of Land Management, Department of the Interior

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Lower Snake River District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held December 4, 2002, at the Lower Snake

River District Office, located at 3948 Development Avenue, Boise, Idaho, beginning at 9 a.m. The public comment periods will be held after each topic. The meeting is expected to adjourn at 4 p.m.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, Lower Snake River District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in southwestern Idaho. At this meeting, the following topics for discussion will include:

- Subgroup reports on Sage Grouse Habitat Management, OHV Initiative, River Recreation and Resource Management Plans, and Fire and Fuels Management;
- RAC Members will discuss what they heard from the Secretary of Interior, the BLM Director, RAC Chairpersons and other RAC Members during the November 20 tele-video conference regarding issues and priorities for the RAC's to address across the nation;
- The LSRD RAC Chair, Don Weilmunster will provide a report to the Members of what he learned while attending the National RAC Conference in Phoenix, November 18–20, 2002;
- RAC Members will discuss how this direction from Washington, DC can be incorporated into their workplans for each sub-group for fiscal year 2003;
- An update will be given on the two Resource Management Plans under development in the District, and
- Each Field Office Manager will provide a brief update on current activities and issues in each of their field office areas.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

Dated: November 6, 2002.

Howard Hedrick,

Associate District Manager.

[FR Doc. 02–28872 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension and revision of a currently approved information collection (OMB Control Number 1010–0050).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 250, subpart J, Pipelines and Pipeline Rights-of-Way and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements and related form.

DATES: Submit written comments by December 16, 2002.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0050), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to E-mail your comments to MMS, the address is: rules.comments@MMS.gov. Reference Information Collection 1010–0050 in your subject line. Include your name and return address, and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations and form MMS–2030 that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, Subpart J, Pipelines and Pipeline Rights-of-Way.

Form Number: MMS–2030, Outer Continental Shelf (OCS) Right-of-Way Grant Bond.

OMB Control Number: 1010–0050, incorporating 1010–0134.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Section 1334(e) authorizes the Secretary to grant rights-of-way through the submerged lands of the OCS for pipelines ''for the transportation of oil, natural gas, sulphur, or other minerals, or under such regulations and upon such conditions as may be prescribed by the Secretary, * * * including (as provided in section 1347(b) of this title) assuring maximum environmental protection by utilization of the best available and safest technologies, including the safest practices for pipeline burial. * * *''

The Independent Offices Appropriations Act (31 U.S.C. 9701) authorizes Federal agencies to recover the full cost of services that provide special benefits. Under the Department of the Interior's (DOI) policy implementing the IOAA, MMS is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Pipeline rights-of-way and assignments are subject to cost recovery and MMS regulations specify filing fees for applications.

This notice concerns the reporting and recordkeeping elements of 30 CFR part 250, subpart J and related forms and NTLs. OMB approved the information collection requirements in current subpart J regulations under control numbers 1010–0050 and 1010–0134. The first is the primary collection for subpart J. The latter was approved in connection with a final rule amending § 250.1000(c) to clarify regulatory issues involving the 1996 Memorandum of Understanding between DOI and the Department of Transportation (DOT). Our submission will consolidate these two subpart J collections under 1010–0050. Responses are mandatory or are required to obtain or retain a benefit. No questions of a ''sensitive'' nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2).

The lessees and transmission companies design the pipelines that they install, maintain, and operate. To ensure those activities are performed in a safe manner, MMS needs information concerning the proposed pipeline and safety equipment, inspections and tests,

and natural and manmade hazards near the proposed pipeline route. MMS field offices use the information collected under subpart J to review pipeline designs prior to approving an application for a right-of-way or a pipeline permitted under a lease to ensure that the pipeline, as constructed, will provide for safe transportation of minerals through the submerged lands of the OCS. They review proposed routes of a right-of-way to ensure that the right-of-way, if granted, would not conflict with any State requirements or unduly interfere with other OCS activities. MMS field offices review plans for taking pipeline safety equipment out of service to ensure alternate measures are used that will properly provide for the safety of the pipeline and associated facilities (platform, etc.). They review notification of relinquishment of a right-of-way grant and requests to abandon pipelines to ensure that all legal obligations are met and pipelines are properly abandoned. MMS inspectors monitor the records on pipeline inspections and tests to ensure safety of operations and protection of the environment and to schedule their workload to permit witnessing and inspecting operations. Information is also necessary to determine the point at which DOI or DOT has regulatory responsibility for a pipeline and to be informed of the responsible operator if not the same as the right-of-way holder.

Frequency: The frequency of reporting is on occasion or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees and 115 pipeline right-of way holders.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual hour burden for the consolidated 30 CFR part 250, subpart J, information collection is a total of 106,086 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burdens.

Citation 30 CFR part 250, subpart J	Reporting and recordkeeping requirement	Hour burden	Average annual responses	Annual burden hours
1000(b), 1007(a)	Submit application to install new lease-term pipeline (P/L), including exceptions/departures, consents and notices, required reports, and attachments.	140	256 new lease-term P/Ls.	35,840
1000(b), (d); 1007(a); 1009(a)(1), (b)(1); 1010; 1011.	Apply for P/L right-of-way (ROW) grant and installation of new ROW P/L, including exceptions/departures, consents and notices, required reports, and attachments.	140	152 new ROW P/Ls	21,280
1000(b); 1007(b); 1010; 1012(b)(2), (c).	Submit application to modify lease-term or ROW P/L or ROW grant, including exceptions/departures; notify operators of deviation.	40	615 modifications	24,600
1000(b); 1009(c)(9); 1014.	Apply to relinquish P/L ROW grant, including exceptions/departures.	8	97 P/L ROW relinquishments.	776
1000(c)(2)	Identify in writing P/L operator on ROW if different from ROW grant holder.	¼	4 submissions	1
1000(c)(3)	Mark specific point on P/L where operating responsibility transfers to transporting operator or depict transfer point on a schematic located on the facility. One-time requirement after final rule published; now part of application or construction process involving no additional burdens.	0		
1000(c)(4)	Petition to MMS for exceptions to general operations transfer point description.	5	1 petition (none received to date.).	5
1000(c)(8)	Request MMS recognize valves landward of last production facility but still located on OCS as point where MMS regulatory authority begins.	1	1 request	1
1000(c)(12)	Petition to MMS to continue to operate under DOT regs upstream of last valve on last production facility.	40	1 petition (none received to date.).	40
1000(c)(13)	Transporting P/L operator petition to DOT and MMS to continue to operate under MMS regs.	40	1 petition (none received to date.).	40
1004(c)	Place sign on safety equipment identified as ineffective and removed from service.	See footnote 1		0
1008(a), (c), (d), (e), (f), (h).	Notify MMS; and as requested submit procedures before performing work; and submit post-report on P/L or P/L safety equipment repair, removal from service, analysis results, or potential measurements.	16	620 notices/ reports	9,920
1008(b)	Submit P/L construction report	16	290 reports	4,640
1008(g)	Submit plan of corrective action and report of remedial action	16	6 plans/reports	96
1009(b)	Submit surety bond on form MMS–2030	¼	152 forms	38
1009(c)(4)	Notify MMS of any archaeological resource discovery	4	2 discovery notices	8
1009(c)(5)	Inform MMS of P/L ROW holder's name and address changes	Exempt under 5 CFR 1320.3(h)		0
1010(a)	Apply to convert lease-term P/L to ROW grant P/L; notify operators of deviation, including various exceptions/departures.	20	8 conversions	160
1011(d)	Request opportunity to eliminate conflict when application has been rejected.	1	1 request	1
1013	Apply for assignment of a ROW grant	16	175 assignments	2,800
1000–1014	General departure and alternative compliance requests not specifically covered elsewhere in subpart J regulations.	2	175 requests	350
Subtotal—Reporting.			2,557	100,596

Citation 30 CFR part 250, subpart J	Reporting and recordkeeping requirement	Hour burden	Average annual responses	Annual burden hours
1000–1008	Make available to MMS design, construction, operation, maintenance, testing, and repair records on lease-term P/Ls [2].	2	130 lease-term P/L operators.	260
1005(a)	Inspect P/L routes for indication of leakage [1], record results, maintain records 2 years [2].	([3])	170 lease-term or ROW P/L operators.	4,080
1009(c)(8)	Make available to MMS design, construction, operation, maintenance, testing, and repair records on P/L ROW area and improvements [2].	10	115 P/L ROW holders	1,150
Subtotal—Recordkeeping.			415	5,490
Total Hour Burden.			2,972	106,086

[1] These activities are usual and customary practices for prudent operators.
[2] Retaining these records is usual and customary business practice; required burden is minimal to make available to MMS.
[3] 2 per month=24.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: The estimated annual non-hour cost burden for the consolidated 30 CFR part 250, subpart J, information collection is a total of $370,100. Section 250.1010(a) specifies that an applicant must pay a non-refundable filing fee when applying for a pipeline right-of-way grant to install a new pipeline ($2,350) or to convert an existing lease-term pipeline into a right-of-way pipeline ($300). Under § 250.1013(b) an applicant must pay a non-refundable filing fee ($60) when applying for approval of an assignment of a right-of-way grant.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on April 1, 2002, we published a **Federal Register** notice (67 FR 15409) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms. That regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts. The required PRA public disclosure and comment statements will be displayed on forms MMS–2030.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 16, 2002.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: September 24, 2002.

Gregory J. Gould,

Acting Chief, Engineering and Operations Division.

[FR Doc. 02–28860 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0119).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 208, subpart A, General Provisions. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled ''Royalty Oil Sales to Eligible Refiners (30 CFR 208.4(a) and (d)).''

DATES: Submit written comments on or before December 16, 2002.

ADDRESSES: Submit written comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0119), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, PO Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB Control Number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385, email *Sharron.Gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: Royalty Oil Sale to Eligible Refiners (30 CFR 208.4(a) and (d)).

OMB Control Number: 1010–0119.

Bureau Form Number: None.

Abstract: The Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

The MMS, on behalf of the Secretary, also performs Determinations of Need prior to issuing a notice of availability of sale in the **Federal Register** advising industry of a forthcoming RIK sale. The first step in this process is to issue a **Federal Register** notice requesting specific information from eligible refiners, such as: The location of their refinery; desirability of offshore versus onshore crude; type of crude desired (*e.g.*, Wyoming Sweet); ability to obtain long-term supply of desired crude (with supporting documentation such as ''denial'' by major supplier); ability to obtain desired crude at fair market prices (with supporting documentation that desired oil was not available or equitably priced for the area or region in question); percentage of total refining capacity attributable to Federal oil versus other sources; *etc.* The MMS uses feedback from refiners (or other interested parties, like lease owners or operators) to assess current marketplace conditions—*i.e.*, whether small, independent refiners have access to ongoing supplies of crude oil at equitable prices. If MMS determines that small refiners do not have adequate access to crude oil supplies, we will take the Government's royalty oil in kind and offer the oil for sale to small refiners.

The MMS is requesting OMB's approval to continue to collect this information. Without feedback from interested refiners regarding their recent marketplace experience in obtaining adequate crude oil supplies and whether those supplies are fairly priced, MMS cannot perform a reasonable or meaningful Determination of Need. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection. We changed the title of this ICR from ''Royalty-in-Kind (RIK) Determination of Need'' to the title listed above to clarify the regulatory language we are covering in this ICR under 30 CFR part 208.

Frequency: On occasion.

Estimated Number and Description of Respondents: 25 small refiners.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 100 hours. The table below shows the breakdown of burden hours by CFR section and paragraph:

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
208.4(a) and (d)	The Secretary may evaluate crude oil market conditions from time to time. * * * The Secretary will review these items (submitted by small refiners) and will determine whether eligible refiners have access to adequate supplies of crude oil * * * *Interim sales.* The potentially eligible refiners, individually or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase * * *.	4	25	100

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour'' cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or record keepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should

describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy. We will post all comments in response to this notice on our web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: October 15, 2002.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–28861 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0057).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 250, subpart C, Pollution Prevention Control, and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by December 16, 2002.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0057), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to E-mail your comments to MMS, the address is: *rules.comments@MMS.gov.* Reference Information Collection 1010–0057 in your subject line. Include your name and return address, and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, Subpart C, Pollution Prevention and Control.

OMB Control Number: 1010–0057.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.'' Section 1334(a)(8) requires that regulations prescribed by the Secretary include provisions ''for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under this Act significantly affect the air quality of any State.'' Section 1843(b) calls for ''regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use.''

This notice concerns the reporting and recordkeeping elements of 30 CFR part 250, subpart C, Pollution Prevention and Control, and related notices to lessees and operators that clarify and provide additional guidance on some aspects of the regulations. Responses are mandatory. No questions of a ''sensitive'' nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2).

MMS OCS Regions collect information required under subpart C to ensure that there is no threat of serious, irreparable, or immediate damage to the marine environment, and to identify potential hazards to commercial fishing caused by OCS activities. We also use the information collected to ensure that operations are conducted according to all applicable regulations and permit conditions/requirements, comply with the approved emission levels to minimize air pollution of the OCS and adjacent onshore areas, and are

conducted in a safe and workmanlike manner. In addition, we require daily inspection of facilities to prevent pollution and to ensure that problems observed have been corrected.

In the Gulf of Mexico OCS Region (GOMR), we require lessees/operators to periodically monitor and collect air emissions and meteorological data to satisfy Environmental Protection Agency and Clean Air Act requirements. The States and regional air quality groups use the information to perform regional air quality modeling in support of State Implementation Plans (SIPs). The GOMR plans regional modeling for emissions data in the year 2005. In preparation, affected respondents will be required to collect and report air pollutant emissions data for OCS activities in the GOMR for the year 2005. The year 2005 corresponds to a Clean Air Act requirement for States with non-attainment areas to prepare and/or update air pollutant emission inventories suitable for air quality modeling in support of the development of SIPs. Thus the year 2005 OCS emissions inventory will be contemporary with the emissions inventory the States are required to prepare. The onshore and OCS 2005 data will be used in regional air quality modeling and emissions control decision-making. Respondents will gather OCS 2005 data during the calendar year 2005 and report in 2006.

Frequency: On occasion, monthly, or annually; and daily for pollution inspection records.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees and 17 States.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual hour burden for this information collection is 159,913 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart C	Reporting and recordkeeping requirement	Hour burden	Average annual responses	Annual burden hours
300(b)(1), (2)	Obtain approval to add petroleum-based substance to drilling mud system or approval for method of disposal of drill cuttings, sand, & other well solids, including those containing NORM.	3	130 lessees	390
300(c)	Mark items that could snag fishing devices	½	130 lessees	65
300(d)	Report items lost overboard	1	130 lessees	130
303(a) thru (d), (i), (j); 304(a),(f)	Submit or revise Exploration Plans and Development and Production Plans; submit information required under 30 CFR part 250, subpart B.	Burden covered under 1010–0049		0
303(k); 304(g)	If requested, submit additional follow-up monitoring information for year 2000 study of selected sites in the BNWA area.	8	75% of 350 platforms = 262.	2,100 over 3 years = 700
303(k); 304(a), (g)	If requested, submit additional or follow-up monitoring information for year 2000 study of selected sites in the western/central GOM area on ozone and regional haze air quality.	4	75% of 1,500 platforms = 1,125.	4,500 over 3 years = 1,500
303(k); 304(a), (g)	Monitor air quality emissions and submit data to MMS or to a State (new 1-year study of sites in the western/central GOM area on ozone and regional haze air quality; data collection in 2005; report submitted in 2006).	2 hours per month × 12 months = 24.	1,850 platforms	44,400 over 3 years = 14,800
303(l); 304(h)	Collect and submit meteorological data (not routinely collected).	None planned in the next 3 years		0
304(a), (f)	Affected State may submit request to MMS for basic emission data from existing facilities to update State's emission inventory.	4	5 requests	20
304(e)(2)	Submit compliance schedule for application of best available control technology.	40	10 schedules	400
304(e)(2)	Apply for suspension of operations	Burden covered under 1010–0114		0
304(f)	Submit information to demonstrate that exempt facility is not significantly affecting air quality of onshore area of a State.	8	10 submissions	80
300–304	General departure and alternative compliance requests not specifically covered elsewhere in subpart C regulations.	2	130 requests	260
Subtotal—Reporting			3,782	18,345
300(d)	Record items lost overboard	1	130 lessees	130
301(a)	Inspect drilling/production facilities daily for pollution; maintain inspection/repair records 2 years.	¼ hour/day × 365 days = 91.25.	1,550 facilities	141,438
Subtotal—Recordkeeping			1,680	141,568
Total hour burden			5,462	159,913

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We anticipate no paperwork non-hour cost burdens during the next 3 years.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 28, 2002, we published a **Federal Register** notice (67 FR 14964) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms. That regulation also informs the public at they may comment at any time on the collections of information and provides the address to which they should send comments. We received no comments in response to the notice or unsolicited comments from respondents covered under these regulations.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 16, 2002.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: October 10, 2002.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–28862 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension and revision of a currently approved information collection (OMB Control Number 1010–0059).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 250, subpart H, Oil and Gas Production Safety Systems, and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by December 16, 2002.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0059), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to E-mail your comments to MMS, the address is: *rules.comments@MMS.gov.* Reference Information Collection 1010–0059 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, Subpart H, Oil and Gas Production Safety Systems.

OMB Control Number: 1010–0059.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. The OCS Lands Act at 43 U.S.C. 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.''

This notice concerns the reporting and recordkeeping elements of 30 CFR part 250, subpart H, Oil and Gas Production Safety Systems, and related notices to lessees and operators that clarify and provide additional guidance on some aspects of the regulations. Responses are mandatory. No questions of a ''sensitive'' nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C.

552) and its implementing regulations (43 CFR part 2).

MMS OCS Regions use the information submitted under subpart H to evaluate equipment and/or procedures that lessees propose to use during production operations, including evaluation of requests for departures or use of alternative procedures. Information submitted is also used to verify the no-flow condition of wells to continue the waiver of requirements to install valves capable of preventing backflow. MMS inspectors review the records maintained to verify compliance with testing and minimum safety requirements.

The Gulf of Mexico OCS Region (GOMR) has recently re-evaluated its policy, and issued guidance, regarding approval of ''new'' requests to use a chemical-only fire prevention and control system in lieu of a water system. With respect to ''currently-approved'' departures, MMS may require additional information be submitted to maintain approval of the departure. They use the information to determine if the chemical-only system provides the equivalent protection of a water system for the egress of personnel should a fire occur.

In the Pacific OCS Region, MMS reviews copies of the Emergency Action Plans (EAP) that lessees and operators submit to their local air quality agencies to ensure that abatement procedures do not jeopardize safe platform operations.

Frequency: The frequency of reporting is on occasion or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for this information collection is a total of 11,357 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart H	Reporting and recordkeeping requirement	Hour burden	Average annual responses	Annual burden hours
800; 801; 802; 803; related NTLs.	Submit application and request submissions approval for design, installation, and operation of subsurface safety devices and surface production-safety systems; including related requests for departures or use of alternative procedures (supervisory control and data acquisition systems, valve closure times, time delay circuitry, etc.).	8	540 submissions	4,320
801(g)	Submit annual verification of no-flow condition of well	2	50 verifications	100
801(h)(1)	Form MMS–124, Sundry Notices and Reports on Wells (renamed Application for Permit to Modify).	Burden covered under 1010–0045		0
801(h)(2); 803(c)	Identify well with sign on wellhead that subsurface safety device is removed; flag safety devices that are out of service.	Usual/customary safety procedure for removing or identifying out-of-service safety devices		0
802(e)(5)	Submit statement certifying final surface production safety system installed conforms to approved design.	3	175 statements	525
803(b)(8); related NTLs	Submit information (risk assessment) to request new firefighting system departure approval (GOMR).	4	150 submissions	600
803(b)(8); related NTLs	Submit information (risk assessment) to retain current firefighting system departure approval (GOMR).	4	100 submissions	400
803(b)(8)(iv)	Post diagram of firefighting system	2	95 postings	190
804(a)(11); 800	Notify MMS prior to production when ready to conduct pre-production test and inspection.	½	175 notices	88
804; related NTLs	Request departure from testing schedule requirements	1	105 requests	105
804; related NTL	Submit copy of state-required EAP containing test abatement plans (Pacific OCS Region).	1	7 plans	7
806(c)	Request evaluation and approval of other quality assurance programs covering manufacture of SPPE.	2	1 request	2
800–807	General departure and alternative compliance requests not specifically covered elsewhere in subpart H regulations.	4	215 requests	860
Subtotal Reporting.			1,613	7,197
801(h)(2); 802(e); 804(b).	Maintain records on subsurface and surface safety devices to include approved design & installation features, testing, repair, removal, etc.	12	130 lessees	1,560
803(b)(1)(iii), (2)(i)	Maintain pressure-recorder charts.	12	130 lessees	1,560
803(b)(4)(iii)	Maintain schematic of the emergency shutdown which indicates the control functions of all safety devices.	4	130 lessees	520
803(b)(11)	Maintain records of wells which have erosion-control programs and results.	4	130 lessees	520
Subtotal Recordkeeping.			520	4,160
Total Hour Burden.			2,133	11,357

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no paperwork ''non-hour cost'' burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 28, 2002, we published a **Federal Register** notice (67 FR 14966) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms. That regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 16, 2002.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: October 17, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–28863 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region; Comment Request

ACTION: Notice/Request for Comments—The Christmas Pageant of Peace.

SUMMARY: The National Park Service is seeking public comments and suggestions on the planning of the 2002 Christmas Pageant of Peace.

SUPPLEMENTARY INFORMATION: The National Park Service is seeking public comments and suggestions on the planning of the 2002 Christmas Pageant of Peace, which opens on December 5, on the Ellipse (President's Parks), south of the White House. The meeting will be held at 10 a.m., on November 19, 2002, in Room 234 of the National Capital Region Building, at 1100 Ohio Drive, SW., Washington, DC (East Potomac Park).

Due to ongoing organizations realignments, the notice could not be published at least 15 days prior to the meeting date. The National Park Service regrets this error, but is compelled to hold the meeting as scheduled because of the high level of anticipation by all parties who will be participating in the planning of this event. Since the proposed meeting date has received widespread publicity among the parties most affected, the National Park Service believes that the public interest will not be adversely affected by the less-than-15-days advance notice in the **Federal Register**.

Persons who would like to comment at the meeting should notify the National Park Service by November 15, 2002 by calling the White House Visitor Center weekdays between 9 a.m., and 4 p.m., at (202) 208–1631. Written comments may be sent to the Park Manager, White House Visitor Center 1100 Ohio Drive, SW., Washington, DC 20242, and can be accepted until November 18, 2002.

DATES: The meeting will be held on Tuesday, November 19. Written comments will be accepted until Monday, November 18, 2002.

ADDRESSES: The meeting will be held at 10 a.m. on November 19, in room 234 of the National Capital Region Building, at 1100 Ohio Drive, SW., Washington, DC (East Potomac Park). Written comments may be sent to the Park Manager, White House Visitor Center 1100 Ohio Drive, SW., Washington, DC 20242. It is recommended, due to delays in mail delivery, that comments be provided by telefax at 202–619–6353 or by email at *stanley_lock@nps.gov.* Comments may also be delivered by messenger to Room 344, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

FOR FURTHER INFORMATION CONTACT: Park Manager Rachel Frantum at the White House Visitor Center weekdays between 9 a.m., and 4 p.m., at (202) 208–1631.

Dated: November 7, 2002.

Stan Lock,

Deputy Director, White House Liaison.

[FR Doc. 02–29027 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of final Information Quality Guidelines.

SUMMARY: The Office of Management and Budget (OMB) issued guidelines in the **Federal Register** on February 22, 2002 (67 FR 8452), that directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public. In

compliance with OMB's guidelines, the Bureau of Reclamation announces the availability of its final Information Quality Guidelines on its Web site.

ADDRESSES: You may access Reclamation's Information Quality Guidelines on its Web site at: *http://www.usbr.gov/main/qoi/*. Our mailing address is: Department of the Interior, Bureau of Reclamation, Attn: Web Manager (W–1540), Mail Stop 7060, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Trudy Harlow; telephone (202) 513–0575; Fax (202) 513–0305; e-mail: tharlow@usbr.gov.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554) directed OMB to issue government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.'' OMB complied by issuing guidelines that directed each Federal agency to: (a) issue its own guidelines; (b) establish administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with OMB's 515 guidelines; and (c) report periodically to the Director of OMB on the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency and how such complaints were handled by the agency.

In compliance with OMB's directives, the Department of the Interior (DOI) issued draft Information Quality Guidelines in the **Federal Register** on May 24, 2002 (65 FR 26642), that instructed each bureau to prepare its own guidelines. In response to DOI's **Federal Register** Notice, Reclamation developed and issued draft guidelines for comment on its Web site on August 1, 2002. We received comments from one private organization and several individuals. We considered their comments, and where applicable or appropriate, we incorporated them into our final guidelines.

We have now finalized our guidelines and posted them to our Web site. These guidelines are a living document and may be revised periodically to reflect changes in DOI's or Reclamation's policy, or as best practices emerge, about how best to address, ensure, and maximize information quality. Reclamation welcomes comments on these guidelines at any time and will consider those comments in any future revisions.

Dated: October 10, 2002.

John W. Keys III,

Commissioner, Bureau of Reclamation.

[FR Doc. 02–28717 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting; Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. Section 552(b)]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 9:30 a.m., Thursday, November 14, 2002.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of Previous Commission Meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Discussion and approval of Salient Factor Scoring Manual Amendments.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: November 8, 2002.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 02–28997 Filed 11–12–02; 8:45 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting; Pursuant to the Government in the Sunshine Act [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 11 a.m., Thursday, November 14, 2002

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involved approximately four cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole and are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: November 8, 2002.

Rockne Chickinell,

General Counsel.

[FR Doc. 02–28998 Filed 11–12–02; 10:10 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 31, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or Email *Howze-Marlene@dol.gov.*

Comments should be sent to office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of

the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: New collection.

Agency: Employment Standards Administration (ESA).

Title: Alternate Employment Information Request.

OMB Number: 1215–0NEW.

Affected Public: Business or other for-profit and not-for-profit institutions.

Frequency: As needed.

Number of Respondents: 100.

Number of Annual Reponses: 2,000.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 1,000.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act), 42 U.S.C. 7384 *et seq.,* established a program to provide compensation to covered employees and, where applicable, survivors of such employees, suffering from illnesses incurred in the performance of duty for the Department of Energy (DOE) and certain of its contractors, subcontractors and vendors. When the DOE is unable to verify employment history to establish benefit eligibility, section 7384d(a) of the Act gives the Office of Workers Compensation (OWCP) legal authority to request employment information from private entities who are not current contractors or subcontractors of DOE and who have voluntarily agreed to respond to such requests. Section 7384v(c) of the Act gives OWCP legal authority to make these same requests to current DOER contractors and subcontractors. This information collection request will use a variety of methods to contract designated respondents and will accept information responses via e-mail, telephone, Fax or mail.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–28929 Filed 11–13–02; 8:45 am]

BILLING CODE 4510–CH–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 4, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or e-Mail: *King-Darrin@dol.gov.*

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Agency: Employment and Training Administration (ETA).

Type of Review: New collection.

Title: Revising Quarterly Contribution and Wage Reports to Accommodate Expanded Name Fields and Additional Labor Market Information.

OMB Number: 1205–0NEW.

Affected Public: Business or other for-profit.

Type of Response: Reporting.

Frequency: One time.

Number of Respondents: 1,600.

Annual Responses: 1,615.

Average Response Time: 30 minutes to complete the survey and 90 minutes to conduct a case study interview.

Estimated Burden Hours: 823.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The information collected with this survey is necessary to assess of the burden employers and State Employment Security Agencies (SESAs) would experience if the quarterly contribution and wage reports filed by employers and processed by SESAs were revised to accommodate full names and additional labor market information (LMI). The full name fields are necessary to enhance the efficiency of the National Directory of New Hires database in locating the employment of individuals who are not meeting their parental responsibilities. The additional LMI data is needed to improve the ability to accurately assess the value of various workforce Investment Act vocational training programs and to enrich the pool of LMI data available.

Ira L. Mills

Departmental Clearance Officer.

[FR Doc. 02–28930 Filed 11–13–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Trade Adjustment Assistance Program: Training and Employment Guidance Letter Interpreting Federal Law

The Employment and Training Administration interprets federal law requirements pertaining to Trade Adjustment Assistance (TAA). These interpretations are issued in Training and Employment Guidance Letters (TEGLs) to the State Workforce Agencies. The TEGL described below is published in the **Federal Register** in order to inform the public.

TEGL 11–02

TEGL 11–02 advises states of the federal law requirements applicable to implementing reforms of the Trade Adjustment Assistance (TAA) program enacted by the TAA-Reform Act of 2002.

The operating instructions in TEGL 11–02 are issued to the States and the cooperating state workforce agencies (SWAs) as guidance provided by the Department of Labor (DOL) in its role as the principal in the TAA program. As agents of the Secretary of Labor, the

States and cooperating SWAs may not vary from the operating instructions in TEGL 11–02 without prior approval from DOL.

Pending the issuance of regulations implementing the provisions of the TAA Reform Act of 2002, the operating instructions in TEGL 11–02 constitute the controlling guidance for the States and the cooperating SWAs implementing and administering the Trade Act of 1974, as amended, pursuant to the agreements between the States and the Secretary of Labor under section 239 of the Trade Act of 1974, as amended.

Changes to the TAA program are set out in TEGL 11–02 according to the principal parts of the TAA program and generally in the order in which they appear in the TAA Reform Act of 2002. The changes to each part, and those aspects of each part that remain unchanged, are explained in turn, along with the regulations principally affected and the changes in program administration that may be required. Sections of the Trade Act of 1974 that are entirely unchanged by the TAA Reform Act of 2002 are discussed after the sections that are changed.

Dated: November 7, 2002.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Training and Employment Guidance Letter No. 11–02

To: All State workforce liaisons, All State workforce agencies, All one-stop center system leads.

From: Emily Stover DeRocco, assistant Secretary.

Subject: Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002.

1. *Purpose.* To assist the State Workforce Agencies (SWA) in implementing the provisions of the Trade Act of 2002 that amend the current Trade Adjustment Assistance program and repeal the North American Free Trade-Transitional Adjustment Assistance program.

2. *References.* The Trade Act of 1974, as amended (Pub. L. 93–618, as amended); the Trade Act of 2002 (Pub. L. 107–210); 20 CFR part 617; 29 CFR part 90; General Administration Letter 7–94 with changes 1, 2, and 3. The amendments to the TAA program may also be referred to as the Trade Adjustment Assistance Reform Act of 2002. Forthcoming directives: Unemployment Insurance Program Letter (UIPL) No. 02–03; ETA guidance—Use of National Emergency Grant Funds Under the Workforce Investment Act, as Amended, to Support Healthcare Assistance for Trade Impacted Workers; Department of the Treasury instructions and guidance on implementing the Health Insurance Tax Credit provisions of the Trade Act of 2002.

To provide guidance on the implementation of various aspects of the Trade Act of 2002, ETA plans to issue the following additional instructions:

Provision	Instructions	Expected issue date	Effective date of provision
Health Insurance Assistance NEGs for System-Building	TEGL: Use of NEGs to Develop Systems for Health Insurance Coverage Assistance for Trade-Impacted Workers.	10/10/02	8/6/02
End-of-Year Tax Credit	UIPL No. 02–03: Health Insurance Tax Credit for Eligible Trade Adjustment Assistance/Trade Readjustment Allowances (TAA/TRA) Recipients.	10/10/02	12/1/02
New Petition Procedures	TEGL	Spring 2003	
Advance Tax Credit	Companion Advisory to IRS Instructions	Late Spring 2003.	8/1/03
Alternative TAA for Older Workers Program	TEGL	Spring 2003	8/6/03

3. *Guiding Principle for TAA Implementation.* The reauthorization and reform of the TAA program and repeal of the NAFTA–TAA program provide an opportunity to ensure that effective strategies are employed to assist affected workers in obtaining reemployment. It is essential that DOL and the states work together to move trade-affected workers into new jobs as quickly and effectively as possible so that they continue to be productive members of our workforce and so that our businesses remain competitive. To this end, the intervention strategies used for program benefits and services will be aimed toward rapid, suitable and long-term employment for adversely affected workers. States must:

A. Increase the focus on early intervention, upfront assessment, and reemployment services for adversely affected workers. It should not be assumed that the best reemployment strategy for all workers is the long-term training and extended income support that has traditionally been the focus of the program. The new requirements in the 2002 Amendments requiring the provision of rapid response and core and intensive services available under WIA and other Federal programs to workers filing a TAA petition afford an important opportunity to stress early intervention and more rapid reemployment. providing an early assessment and identification of the worker's marketable skills, and the provision of job search assistance and other reemployment services will assist many workers in obtaining suitable reemployment quickly.

B. Use One-Stop Career Centers as the main point of participant intake and delivery of benefits and services. This will encourage coordination among programs in order to better serve workers and promote efficiencies in the workforce system.

C. Maintain fiscal integrity and promote performance accountability. ETA will ensure that money allocated for TAA is sued for the purposes Congress intended—to improve the economy, and assist workers and businesses—and that it is spent with the interests of taxpayers in mind. This will occur, in part, through strengthened participant outcome measures for the program.

4. *Background.* the Trade Adjustment Assistance (TAA) program for workers was first established at the U.S. Department of Labor (DOL) by the Trade Act of 1974 (1974 Act). Currently, when DOL receives a petition for TAA from a group of workers or its authorized representative, DOL conducts a fact-finding investigation to determine whether increased imports have contributed importantly to the workers' dispacement. IF the findings of the investigation show that the workers have been adversely affected by import competition, the Secretary of Labor issues a certification of eligibility to apply for adjustment assistance. Once a certification is issued, it is transmitted

to the State. The SWAs act as agents of the Secretary to notify certified workers of potential Trade Act benefits and services, make eligibility determinations for individuals, and deliver benefits and services. Individual workers who are members of the certified worker group apply for benefits and services at a One-Stop Career Center or other local office of the SWA. Individual workers who meet the qualifying criteria may receive up to 104 weeks of job retraining, up to 52 weeks (generally) of income support in the form of Trade Readjustment Allowances (TRA), job search allowances, and relocation allowances. In addition, all workers covered by a certification are eligible for basic reemployment services such as job referrals, job clubs, resume-writing assistance, and so forth. Most of the steps in this current process have been affected by the provisions of the Trade Act of 2002 (2002 Act).

The 1974 Act has been amended several times since its initial passage. In December 1993, the North American Free Trade Implementation Act created the North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA–TAA) program by adding subchapter D to chapter 2 of title II of the 1974 Act. Subchapter D contains one section, section 250, which established the NAFTA–TAA program and specified some differences between it and the regular TAA program. Certifications of worker groups under NAFTA–TAA were made only if imports from Canada and/or Mexico caused the import impact, or if the workers' firm shifted production to either Canada or Mexico. Workers filed their petitions with the Governor of the State in which they were employed, not directly with DOL, and the State performed a preliminary investigation. If the workers appeared to be impacted by imports from Canada or Mexico or a shift of production to Canada or Mexico, the state provided rapid response assistance under the Workforce Investment Act of 1998 (WIA). The State then transmitted all information gathered in the preliminary investigation to DOL, which issued the final determination on eligibility to apply. In order to qualify for TRA, workers had to be enrolled in training within specific time limits. Workers certified under NAFTA–TAA had to be enrolled in approved training in order to qualify for TRA; no waivers from this requirement were allowed. Regular TAA allowed waivers if training was ''not feasible or appropriate'' for the worker.

Along with the creation of the NAFTA–TAA program, the Clinton Administration issued a Statement of Administrative Action (SAA) that committed to providing assistance to workers who were not directly impacted by trade with Canada or Mexico, but were indirectly impacted because their firm supplied components to, or performed finishing operations for, a firm which was directly impacted. These secondarily-impacted workers petitioned for certification in the same way as for the NAFTA–TAA program, or DOL initiated a secondary investigation if the result of a primary NAFTA–TAA investigation was a denial of eligibility to apply. In either case, if the worker group was found to be secondarily impacted by imports from Canada and/or Mexico or a shift of production to Canada or Mexico, the members of the group qualified for benefits and services delivered through the dislocated worker program under WIA.

On August 6, 2002, President George W. Bush signed into law H.R. 3009, the Trade Act of 2002 (2002 Act), Pub. L. 107–210. The 2002 Act makes several amendments to the 1974 Act. The amendments that are covered in these operating instructions apply to petitions for adjustment assistance that are filed on or after November 4, 2002. Petitions filed on or before November 3, 2002, are covered by the provisions of the 1974 Act that were in effect on September 30, 2001.

The 2002 Act repeals subchapter D of chapter 2 of title II of the 1974 Act (the NAFTA–TAA program). However, workers covered under certifications issued pursuant to NAFTA–TAA petitions filed on or before November 3, 2002, will continue to be covered under the provisions of the NAFTA–TAA program that were in effect on September 30, 2001. The 2002 Act generally did not amend the job retraining provisions of the 1974 Act, except that customized training may now be approved for import-impacted workers. The statutory cap on funds that may be allocated to the States for training is raised from $110 million to $220 million per year. The maximum amount of TRA is increased by 26 weeks of additional TRA for all workers in training. Up to 26 more weeks of additional TRA may be approved if the worker must undergo remedial training as part of his/her retraining program. In order to qualify for TRA, a worker must be enrolled in training within 16 weeks of his/her most recent total qualifying separation, or within 8 weeks of the issuance of the certification, whichever is later. However, States may grant an extension of these requirements for up to 45 days if there are extenuating circumstances. Waivers from the training requirement are available under six specific conditions. A worker may continue to receive TRA during a break in training that lasts up to 30 days (raised from 14 days).

To petition for eligibility to apply for TAA, workers or their authorized representatives must now file the petition simultaneously with the Secretary of Labor and the Governor of the State where the workers were employed. The Governor no longer has responsibility for conducting a preliminary investigation. However, the Governor must provide rapid response services and appropriate core and intensive to all petitioning workers. DOL has 40 days to conduct an eligibility investigation and issue a determination. The 2002 Act also makes the secondary-worker coverage, as provided under the Statement of Administrative Action, statutory. Workers who are found to be secondarily-impacted, as defined in the Act, are eligible to apply for the same benefits and services as workers certified as primarily impacted; the benefits and services for both primarily and secondarily-affected workers are paid from TAA funds.

The 2002 Act creates a program of health insurance tax credits (HITC) for certain trade-impacted workers and others. Covered individuals include workers who are eligible for TRA (including those workers who would be eligible except that they have not exhausted all entitlement to unemployment insurance), workers participating in the alternative TAA program (next paragraph), and individuals over 55 years old who are receiving monthly benefits paid by the Pension Benefit Guaranty Corporation (PBGC). Covered individuals may be eligible to receive a tax credit equal to 65% of the amount they paid for qualifying coverage under qualified health insurance. The tax credit may be claimed at the end of the year, or, beginning in August 2003, a qualified individual may receive the credit in the form of monthly advance payments to the health insurance provider.

The 2002 Act creates the Alternative TAA (ATAA) for Older Workers program. Under the ATAA, workers at least 50 years who obtain different, full-time employment within 26 weeks of separation from adversely-affected employment at wages less than the wages earned in the adversely-affected employment may receive 50 percent of the wage differential, up to a maximum of $10,000, during their two-year eligibility period. To be eligible for the ATAA program, workers may not earn more than $50,000 per year in the new employment. Also, the firm where the

workers worked must meet certain eligibility criteria. Workers who take advantage of the ATAA cannot receive three of the regular TAA benefits and services (training, TRA, and job search allowances); they are, however, eligible to apply for relocation allowances and the health insurance tax credit.

The 2002 Act also creates a separate TAA program for farmers. Eligibility determinations for that program are the responsibility of the Secretary of Agriculture. Farmers certified under that program are entitled to the same DOL-funded basic reemployment services, training, job search, and relocation services as regular TAA workers, but they may not receive TRA. The Secretary of Agriculture is authorized to make cash assistance payments (up to $10,000 per year) to eligible farmers.

5. *Operating Instructions.* The operating instructions in this document are issued to the States and the cooperating SWAs as guidance provided by the Department of Labor (DOL) in its role as the principal in the TAA program. As agents of the Secretary of Labor, the States and cooperating State agencies may not vary from the operating instructions in this document without prior approval from DOL.

Pending the issuance of regulations implementing the provisions of the 2002 Act, the operating instructions in this document constitute the controlling guidance for the States and the cooperating State agencies in implementing and administering the 1974 Act, as amended, pursuant to the agreements between the States and the Secretary of Labor under section 239 of the 1974 Act, as amended.

Changes to the TAA program are set out in this document according to the principal parts of the TAA program and generally in the order in which they appear in the 2002 Act. The changes to each part, and those aspects of each part that remain unchanged, are explained in turn, along with the regulations principally affected and the changes in program administration that may be required. Sections of the 1974 Act which are entirely unchanged by the 2002 Act are discussed after the sections that are changed.

In general, the amendments to the 1974 Act made by the 2002 Act take effect on November 4, 2002, 90 days after the President signed the 2002 Act into law.

All of the changes to the petitioning process apply to petitions filed on or after November 4, 2002. Changes to the eligibility requirements and levels of Trade Act benefits and services apply to workers covered by certifications issued pursuant to petitions filed on or after November 4, 2002. For convenience and emphasis, the effective date is repeated in several sections of these instructions. Exceptions to this effective date apply to certain aspects of the health insurance tax credit and to the ATAA program. Instructions for those are not included in this document, but will be issued in separate directives in the near future.

There are provisions of the 2002 Act that are not covered by these operating instructions. The Health Insurance Tax Credit (HITC) provisions involve several Departments, including the Departments of Labor, Health and Human Services, and the Treasury (including the Internal Revenue Service). Guidance and instructions for the HITC are forthcoming. Similarly, the ATAA will not be implemented until the summer of 2003. Complete guidance and operating instructions for the ATAA are forthcoming. The HITC and the ATAA are discussed briefly in this document, and only for informational purposes.

For purposes of these operating instructions, the following definitions will apply:

1. 2002 Act means the Trade Act of 2002, Pub. L. 107–210.
2. 1974 Act means the Trade Act of 1974, as amended (but not including the amendments in the 2002 Act), Pub. L. 93–618, as amended.
3. DOL means the U.S. Department of Labor.
4. Secretary means the Secretary of Labor.
5. TAA means the Trade Adjustment Assistance program.
6. NAFTA–TAA means the North American Free Trade Agreement-Transitional Adjustment Assistance program.
7. TRA means Trade Readjustment Allowances.
8. ATAA means Alternative Trade Adjustment Assistance program.
9. HITC means Health Insurance Tax Credit.
10. WIA means the Workforce Investment Act of 1998.

A. Reauthorization, Termination, and Expenditure Record

Statutory Change: Section 111 of the 2002 Act amends sections 245 and 285 of the 1974 Act as follows:

Sec. 285. Termination

(a) Assistance for Workers.—Section 245 of the Trade Act of 1974 (19 U.S.C. 2317) is amended by striking 'October 1, 1998, and ending September 30, 2001, each place it appears and inserting October 1, 2001, and ending September 30, 2007,'.

(c) Termination.—Section 285 of the Trade Act of 1974 is amended to read as follows:

(a) Assistance for Workers.—

(1) *In General.*—Except as provided in paragraph (2), trade adjustment assistance, vouchers, allowances, and other payments or benefits may not be provided under chapter 2 after September 30, 2007.

(2) *Exception.*—Notwithstanding paragraph (1), a worker shall continue to receive trade adjustment assistance benefits and other benefits under chapter 2 for any week for which the worker meets the eligibility requirements of that chapter, if on or before September 30, 2007, the worker is—

(A) Certified as eligible for trade adjustment assistance benefits under chapter 2 of this title; and

(B) Otherwise eligible to receive trade adjustment benefits under chapter 2.

Administration: The trade adjustment assistance program for workers is reauthorized through September 30, 2007, the end of fiscal year 2007. The amendment also authorizes the payment past that date of program benefits to workers who are covered by a certification issued on or before that date and are otherwise eligible to receive the benefits.

Statutory Change: Section 120 of the 2002 Act amends section 245 of the 1974 Act as follows:

Section 245 of the Trade Act of 1974 (19 U.S.C. 2317), as amended by section 111(a) of this Act, is further amended by amending subsection (b) to read as follows:

(b) *Period of Expenditure.*—Funds obligated for any fiscal year to carry out activities under sections 235 through 238 may be expended by each State receiving such funds during that fiscal year and the succeeding two fiscal years.

Administration: This amendment codifies the existing way of handling funds allocated to States for job training (including transportation and subsistence allowances), job search allowances, and relocation allowances.

States may accrue expenditures during the fiscal year in which they receive funding, and during the succeeding two fiscal years. States must liquidate all accrued expenditures charged to a particular fiscal year within 90 days after the close of the second succeeding fiscal year (29 CFR 97.23(b)).

B. Petition Filing and Provision of Rapid Response Assistance

B.1. Petition Filing

Statutory Change: Section 112(a) of the 2002 Act amends section 221(a) of the 1974 Act to read as follows:

(a)(1) A petition for certification of eligibility to apply for adjustment assistance for a group of workers under this chapter may be filed simultaneously with the Secretary and the Governor of the State in which such workers' firm or subdivision is located by any of the following:

(A) The group of workers (including workers in an agricultural firm or subdivision of an agricultural firm).

(B) The certified or recognized union or other dully authorized representative of such workers.

(C) Employers of such workers, one-stop operators are one-stop partners (as defined in section 101 of the Workforce Investment Act of 198 (29 U.S.C. 2801)), including State employment security agencies, or the State dislocated worker unit established under title I of such Act, on behalf of such workers.

(2) Upon receipt of a petition filed under paragraph (1), the Governor shall—

(A) Ensure that rapid response assistance, and appropriate core and intensive services (as described in section 134 of the Workforce Investment Act of 1998 (29 U.S.C. 2864)) authorized under other Federal laws are made available to the workers covered by the petition to the extent authorized under such laws; and

(B) Assist the Secretary in the review of the petition by verifying such information and providing such other assistance as the Secretary may request.

Administration: Beginning on November 4, 202, petitions for certification of eligibility to apply for adjustment assistance must be filed simultaneously with the Secretary of Labor and the Governor of the State where the petitioning workers worked. Although the language of the statute says ''may'' be filed simultaneously, the legal interpretation is that anyone who has standing to file a petition and who wishers to do so *must* file simultaneously with the Secretary and the Governor in order that they are both able to carry out their statutory responsibilities. If the statute had said ''shall'' file simultaneously, that would be a legal requirement that all persons in the United States who fit into one or more of the three listed categories must file petitions for adjustment assistance.

Throughout those operating instructions, the terms ''filed'' and ''received'' have the same meaning with respect to the petitioning process. Regulations published at 29 CFR 90.2 state that ''*Date of filing* means the date on which petitions and other documents are received by the Office of Trade Adjustments Assistance. Employment and Training Administration, U.S. Department of Labor * * *''.

Petitions may be filed by any of the following:

1. Three or more individual members of the affected worker group;
2. An official of the certified or recognized union that represents the workers;
3. An official of the company where the workers worked;
4. One-Stop operators are partners as defined in section 101 of the WIA, including SWAs or the State dislocated worker unit.

The States is also required to assist the Secretary in the review of the petition by verifying such information and providing other assistance as the Secretary may request. However, States no longer perform preliminary investigations as they did under the NAFTA–TAA program.

States must be prepared to assist petitioners in completing and filing petitions. Petitions forms must be readily available at all One-Stop Career Centers and other local offices of the SWA. Upon receiving a petition, the State must immediately transmit the petition by facsimile or other electronic means to DOL. If a petition is received both in the State and transmitted to DOL on the same day, the petition will be considered to have been filed simultaneously with the Secretary and the Governor. However, in practice, strictly simultaneous filing may not be practical. If a petition is not received on the same day by both the Secretary and the Governor, it will be considered to be filed on the later of the two different dates of receipt. A new petition form will be supplied to the States by DOL; the new petition form will also be available for download from the TAA Web site (*http://www.doleta.gov/tradeact*). Petitions filed on or after November 4, 2002, must use the new form.

B.2. Rapid Response

Upon receipt of a petition on or after November 4, 2002, the State must ensure that rapid response assistance and appropriate core and intensive services, as described in section 134 of the WIA, are made available to the workers covered by the petition to the extent authorized under the WIA and other Federal laws. This requirement applies to every petition received. If a petition is generated during the course of rapid response assistance to a worker group, this requirement will be satisfied for that petition. The State shall use the date that the petition is received by the State as the criterion for providing rapid response assistance.

C. Group Eligibility Requirements

Section 113 of the 2002 Act amends section 222 of the 1974 Act by broadening the criteria for certification and adding eligibility for certain secondarily-affected workers. In order to properly assist workers or their representatives to file petitions for adjustment assistance, or to properly file themselves on behalf of workers, States must know the new criteria for certification of petitions for both primarily-affected workers and secondarily-affected workers. Responsibility for investigating petitions and applying the criteria for certification will rest with DOL.

It is important to note from the outset that the inclusion of secondarily-affected workers does *not* create a separate group of certified workers who are eligible for benefits and services that are different from those available to other certified workers. All workers covered by certifications issued pursuant to petitions filed on or after November 4, 2002, whether they are 'primarily affected' or 'secondarily affected', are eligible to apply for the same set of benefits and services.

C.1. Certification Criteria

Statutory Change: Section 113 of the 2002 Act amends section 222(a) of the 1974 Act to read as follows:

(a) In General.—A group of workers (including workers in any agricultural firm of subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for adjustment assistance under this chapter pursuant to a petition filed under section 221 if the Secretary determines that—

(1) A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) The sales or production, or both, of such firm or subdivision have decreased absolutely;

(ii) Important of articles like or directly competitive with articles produced by such firm or subdivision have increased; and

(iii) The increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

(B)(i) There has been a shift of production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

(ii)(I) The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

(II) The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preferences Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

(III) There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Administration: The criteria for certification of eligibility to apply for adjustment assistance now cover adverse effects either from increased imports or from a shift of production to certain countries. In order for a certification to be issued, the petition must satisfy these two criteria:

1. A significant number or proportion of the workers in the workers' firm, or an appropriate subdivision of such firm, must have become totally or partially separated or be threatened with total or partial separation.

2. The second criterion is satisfied if either A or B below are satisfied:

A.(i) Sales or production, or both, at the petitioning workers' firm or subdivision must have decreased absolutely, and

(ii) Imports of articles like or directly competitive with articles produced by the petitioning workers' firm or subdivision have increased, and

(iii) The increase in imports described in (ii) contributed importantly to the petitioning workers' separation or threat of separation and to the decline in sales or production at the firm or subdivision.

B. (i) There has been a shift of production by the petitioning workers' firm or subdivision to a foreign country of articles like or directly competitive with the articles which are produced by the firm or subdivision, and

(ii) one of the following conditions applies:

a. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States; or

b. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, the African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act, or

c. There has been or is likely to be an increase in imports of the articles that are like or directly competitive with articles which are or were produced by the firm or subdivision.

The new certification criteria are basically a combination of the criteria for the old TAA program and those for the NAFTA–TAA program. the first set of criteria for certification are the same as those that have applied to the TAA program since its inception. The second set of criteria takes the shift of production criterion from the NAFTA–TAA program and modifies it to cover shifts to many, but not all, countries. The applicable countries are those included in three specific trade-promotion Acts and any others that are parties to free-trade agreements with the United States. The group of countries that are applicable for these purposes may change from time to time; a current list of such countries will be available on the TAA Web site. For shifts of production to countries that do not fall into either of those groups, there is a third criterion that covers actual or prospective increases of imports of like or directly competitive products. The latter criterion does *not* require that the actual or prospective increases in imports come from the country to which the shift of production occurred.

C.2. Secondarily-Affected Worker Eligibility

Statutory Change: Section 113(b) of the 2002 Act continues the amendments to section 222 of the 1974 Act by redesignating section 222(b) of the 1974 Act as section 222(c) and inserting the following:

(b) Adversely Affected Secondary Workers.—A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for adjustment assistance benefits under this chapter if the Secretary determines that—

(1) A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility under subsection (a), and such supply or production is related to the article that was the basis for such certification (as defined in subsection (c)(3) and (4)); and

(3) Either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (a).

Section 113(b) of the 2002 Act amends section 222(c) (as redesignated) of the 1974 Act by adding the following:

(3) Downstream Producer.—The term 'downstream producer' means a firm that performs additional, value-added production processes for a firm or subdivision, including a firm that performs final assembly or finishing, directly for another firm (or subdivision), for articles that were the basis for a certification of eligibility under subsection (a) of a group of workers employed by such other firm, if the certification of eligibility under subsection (a) is based on an increase in imports from, or a shift of production to, Canada or Mexico.

(4) Supplier.—The term 'supplier' means a firm that produces and supplies directly to another firm (or subdivision) component part for articles that were the basis for a certification of eligibility under subsection (a) of a group of workers employed by such other firm.

Administration: there are basically two groups of workers that can be certified as eligible to apply for adjustment assistance because the workers are secondarily affected—workers who supply components (upstream) to a firm whose workers are certified (primary) or workers who perform additional, value-added production and finishing operations (downstream) for a firm whose workers are certified (primary).

Upstream workers must directly supply the primary firms. the articles produced by upstream workers must be directly incorporated into the articles that were the basis for the certification of the primary firm's workers. Supplier chains are often categorized according to ''tiers.'' Firms in the first tier supply components directly to the producer of the final product. Firms in the second tier supply components to firms in the first tier, and so forth. The secondary-worker coverage applies only to workers employed by firms in the first tier. The components supplied to the primary firm by the upstream workers must either account for at least 20 percent to the production or sales of the upstream firm, or the loss of business with the primary firm by the upstream firm must have contributed importantly to the upstream workers' separations or threat of separations. For upstream workers to be certified as secondarily affected, the import impact on the primary firm can come from increased imports from any country or a shift of production to any country that qualifies under the shift-of-production criteria.

Downstream workers must directly perform additional, value-added production processes, including final assemble or finishing, on the products of the primary firm. Downstream workers can only be certified as secondarily affected if the workers of the primary firm are certified based on increased imports from Canada or Mexico or a shift of production to Canada or Mexico. Also, the downstream workers' firm must have suffered a loss of business with the primary firm that contributed importantly to the workers' separations or threat of separations.

C.3. Secondary Worker Coverage Under the SAA

The secondary-worker coverage that was established by the Statement of Administrative Action (SAA) that accompanied the NAFTA implementing legislation applied only to workers who were adversely affected by imports from, or a shift of production to, Canada or Mexico. Workers determined to be secondarily impacted under the SAA received benefits and services through the dislocated worker program under WIA. Under the 2002 Act, the TAA

program will be responsible for benefits and services provided to workers who are certified as secondarily affected pursuant to petitions received on or after November 4, 2002. The benefits and services available to such workers, and the eligibility critiera applicable to them, are exactly the same as for workers who are certified as primarily impacted.

D. Trade Readjustment Allowances

D.1. Exhaustion of Unemployment Insurance

Statutory Change: Section 114(a) of the 2002 Act amends section 231(a)(3)(B) of the 1974 Act by inserting at the end of the subsection ''except additional compensation that is funded by a State and is not reimbursed from any Federal funds.''

Administration: As amended, section 231(a)(3)(B) requires that a worker must exhaust all entitlement to unemployment insurance in order to be eligible for TRA. Entitlement to unemployment insurance includes regular UC and Extended Benefits (EB) and Temporary Extended Unemployment Compensation (TEUC). However, the new amendment means that an eligible worker may receive TRA before (or, depending on State law, along with) receiving additional compensation that is entirely State-funded.

Under section 233(a)(1) of the 1974 Act, which has not been amended, a determination of the amount of basic TRA to which an eligible worker is entitled is made by computing 52 times the most recent TRA weekly benefit amount (WRA), then deducting from that amount the sum of the unemployment insurance to which the worker was entitled in the worker's first benefit period. However, the statutory change to section 231(a)(3)(B) is interpreted to mean that additional compensation that is entirely State-funded shall not be deducted from the product of 52 times the worker's WBA in computing a worker's basic TRA maximum benefit amount.

D.2. Enrollment in Training Requirement

Statutory Change: Section 114(b) of the 2002 Act amends section 231(a)(5)(A) of the 1974 Act to read;

(5) Such worker

(A)(i) Is enrolled in a training program approved by the Secretary under section 236(a) of this title, and

(ii) The enrollment required under clause 9i) occurs no later than the latest of—

(I) The last day of the 16th week after the worker's most recent total separation form adversely affected employment which meets the requirements of paragraphs (1) and (2),

(II) The last day of the 8th week after the week in which the Secretary issues a certification covering the worker,

(III) 45 days after the later of the dates specified in subclause (I) or (II), if the Secretary determines that there are extenuating circumstances that justify an extension in the enrollment period, or

(IV) The last day of a period determined by the Secretary to be approved for enrollment after the termination of a waiver issued pursuant to subsection (c).

Administration: ''Enrolled in training'' means that the worker's application for training has been approved by the SWA and that the training institution has furnished written notice to the SWA that the worker has been accepted into the approved program which is to begin within 30 days of such approval (20 CFR 617.11(a)(2)(vii)(D)). States are encourage to select training providers that have met the qualifications necessary to be included in the Eligible Training Provider List (ETPL) as defined in the WIA.

''Extenuating circumstances'' are situations that could arise when training programs are abruptly cancelled or where the first available enrollment date is past the end of the 60-day period, as well as in cases where a worker suffers injury or illness that adversely affects the worker's ability to enroll in training. These new enrollment deadlines are nearly the same as those that have existed for the NAFTA–TAA program since 1994. These deadlines may be waived for specified reasons, which are discussed next. However, the intent of time limitations is that adversely-affected workers who are in need of training be enrolled in training quickly in order to expedite their adjustment and reemployment.

For purposes of subsection IV, ''the last day of a period determined by the Secretary'' is the first Monday of the week following the week in which the waiver is terminated, whether by revocation or expiration, until such time as this issue is addressed in regulations.

D.3. Training Waivers

Statutory Change: Section 115 of the 2002 Act amends section 231(c) of the 1974 Act to read as follows:

(c) Waivers of Training Requirements.—

(1) Issuance of waivers.—The Secretary may issue a written statement to an adversely affected worker waiving the requirement to be enrolled in training described in subsection (a)(5)(A) if the Secretary determines that it is not feasible or appropriate for the workers, because of 1 or more of the following reasons:

(A) Recall.—The workers has been notified that the workers will be recalled by the firm from which the separation occurred.

(B) Marketable Skills.—The workers possesses marketable skills for suitable employment (as determined pursuant to an assessment of the worker, which may include the profiling system under section 303(j) of the Social Security Act (42 U.S.C. 503(j)), carried out in accordance with guidelines issued by the Secretary) and there is a reasonable expectation of employment at equivalent wages in the foreseeable future.

(C) Retirement.—The worker is within 2 years of meeting all requirements for entitlement to either—

(i) Old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 *et seq.*) (except for application therefor); or

(ii) A private pension sponsored by an employer or labor organization.

(D) Health.—The worker is unable to participate in training due to the health of the worker, except that a waiver under this subparagraph shall not be construed to exempt a worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.

(E) Enrollment Unavailable.—The first available enrollment date for the approved training of the worker is within 60 days after the date of the determination made under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment, as determined pursuant to guidelines issued by the Secretary.

(F) Training Not Available.—Training approved by the Secretary is not reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 3 of the Carl D. Perkins Vocational and Technical Education Act of 1988 (20 U.S.C. 2302), and employers), no training that is suitable for the worker is available at reasonable cost, or no training funds are available .

(2) Duration of Waivers.—

(A) In General.—A waiver issued under paragraph (1) shall be effective for not more than 6 months after the date on which the waiver is issued, unless the Secretary determines otherwise.

(B) Revocation.—The Secretary shall revoke a waiver issued under paragraph (1) if the Secretary determines that the basis of a waiver is no longer applicable to the worker and shall notify the worker in writing of the revocation.

(3) Agreements Under Section 239.—

(A) Issuance by Cooperating States.—Pursuant to an agreement under section 239, the Secretary may authorize a cooperating State to issue waivers as described in paragraph (1).

(B) Submission of Statements.—An agreement under section 239 shall include a requirement that the cooperating State submit to the Secretary the written statements provided under paragraph (1) and a statement of the reasons for the waiver.

Section 115 of the 2002 Act also amends section 231(a)(5)(C) of the 1974 Act by striking the word ''certified''.

Administration: There are now six specific criteria for issuing a waiver of the training requirement. Criterion (A) requires that a worker has received specific notice of recall to the worker's adversely-affected employment. States shall require that this notice of recall be in writing from the firm. Criterion (B) should be used as a means of encouraging more rapid reemployment and the use of up-front job search. As part of the marketable skills test, workers in a petitioning worker group may receive core and intensive services using rapid response funding before their petition is certified to encourage more rapid reemployment. Criterion (E) requires that the worker's training begin within 60 days after the approval of the waiver, unless there are extenuating circumstances. Such circumstances could arise when training programs are abruptly cancelled or where the first available enrollment date is past the end of the 60-day period, as well as in cases where a worker suffers injury or illness that adversely affects the worker's ability to enroll in training. The statutory language in criteria (C), (D), and (F) needs no further explanation.

Also, as before, a waiver only applies to eligibility for basic TRA, not additional TRA. In order to receive additional TRA, a worker must be participating in approved training in each week for which the additional TRA is paid.

In accordance with section 231(c)(3)(A) of the 1974 Act, as amended by the 2002 Act, States may issue waivers from the training requirement, when necessary and proper, in accordance with the statutory language and these instructions for eligible workers who are covered by certifications issued pursuant to petitions received on or after November 4, 2002. Also, in accordance with section 231(c)(3)(B) of the 1974 Act, as amended by the 2002 Act, States must submit to the Secretary reports on all waivers issued. The required reports are discussed in more detail in these instructions in section K, Program Reporting.

D.4. Limitations on TRA

Statutory Change: Section 116(a) of the 2002 Act amends section 233(a) of the 1974 Act so that paragraph (2) reads as follows:

(2) A trade readjustment allowance shall not be paid for any week occurring after the close of the 104-week period (or, in the case of an adversely affected worker who requires a program of remedial education (as described in section 236(a)(5)(D)) in order to complete training approved for the worker under section 235, the 130-week period) that begins with the first week following the week in which the adversely affected worker was most recently totally separated from adversely affected employment—

(A) Within the period which is described in section 231(a)(1) of this title, and

(B) With respect to which the worker meets the requirements of section 231(a)(2) of this title.

Administration: This section of the 1974 Act creates as 104-week period beginning with a worker's most recent total qualifying separation during which the worker may receive any basic TRA to which the worker is entitled. States must continue to apply this rule, except that, in cases where a worker requires remedial education as part of the worker's reemployment plan, such a worker has a 130-period in which to receive any basic TRA to which the worker is entitled.

Statutory Change: Section 116(a) of the 2002 Act also amends section 233(a) of the 1974 Act so that paragraph (3) reads as follows:

(3) Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 236 of this title, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 52 additional weeks in the 52-week period that—

(A) Follows the last week of entitlement to trade readjustment allowances otherwise payable under this part; or

(B) Begins with the first week of such training, if such training begins after the last week described in subparagraph (A). Payments for such additional weeks may be made only for weeks in such 52-week period during which the individual is participating in such training.

Administration: This amendment increases the maximum number of weeks of additional TRA for all eligible workers from 26 to 52. In all other respects, the regulations and operating instructions related to additional TRA are unchanged, except for the case where a worker who undergoes remedial training may qualify for up to 36 more weeks of additional TRA (see below).

States must continue to apply the regulatory definition of additional TRA (20 CFR 617.3(m)(2)), and the regulations on weeks of additional TRA (20 CFR 617.15(b)), which continue to be in effect until they are superseded by new regulations, except that all occurrences of ''26 weeks'' in the regulations are interpreted as referring to ''52 weeks'' for workers covered by certifications that are issued pursuant to petitions received on or after November 4, 2002.

Statutory Change: Section 116(b) of the 2002 Act amends section 233(f) of the 1974 Act to read:

(f) Workers treated as participating in training. For purposes of this part, a worker shall be treated as participating in training during any week which is part of a break in training that does not exceed 30 days if—

(1) The worker was participating in a training program approved under section 236 of this title before the beginning of such break in training, and

(2) The break is provided under such program.

Administration: A State must continue to pay TRA to a worker who is receiving TRA while participating in approved training during scheduled or other normal breaks in the training that last for up to 30 days. The regulations which govern breaks in training, 20 CFR 617.15(d), continue in effect, except that the number ''14'' in that section is interpreted as ''30'' and the number ''15'' found in section 617.15(d)(3) is interpreted as ''31'' until they are superseded by new regulations. In addition, the reference to ''14-day break in training'' in 20 CFR 617.22(f)(3)(ii) is interpreted as ''30-day break in training''.

Statutory Change: Section 116(c) of the 2002 Act amends section 233 of the 1974 Act by adding the following subsection at the end:

(g) Notwithstanding any other provision of this section, in order to assist an adversely affected worker to complete training approved for the worker under section 236 which includes a program of remedial education (as described in section 236(a)(5)(D)), and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter.

Administration: Remedial education is defined as training in the elementary skills that every worker must have in order to achieve basic reemployability. Remedial training should be considered pre-vocational; that is, it leads to occupational, on-the-job, or customized training that will equip the participant with specific job skills. Wherever practical, remedial training should be conducted concurrently with the early parts of occupational training. Examples of remedial education are basic writing and mathematical skills training, English as a Second Language (ESL) and courses leading to a G.E.D.

For a worker who must undergo remedial education as part of the worker's retraining plan, the maximum number of weeks of additional TRA is 78, or 26 more than the maximum for workers who do not participate in remedial education. States must also apply the definition of additional TRA

(20 CFR 617.3(m)(2)) as well as the regulations on weeks of additional TRA (20 CFR 617.15(b)), which continue to be in effect until they are superseded by new regulations, except that all occurrences of ''26 weeks'' in the regulations shall be interpreted as referring to ''78 weeks'' for workers who undergo remedial education and are covered by certifications that are issued pursuant to petitions received on or after November 4, 2002. In addition, Stat4es must pay the weeks of the TRA for trainees in remedial education on the basis of one week of this additional TRA for one week of remedial education, up to the 26-week maximum. For example, of a worker undergoes 15 weeks of remedial education, then participates in occupational training, the State may not pay more than 15 weeks of this additional TRA for trainees in remedial education. If a worker undergoes more than 26 weeks of remedial education, the worker may not receive more than the maximum of 26 weeks of this additional TRA. However many weeks a worker is eligible for, those weeks must be a fixed, continuous time period of that many weeks. The weeks of additional TRA for remedial education must follow the last week of entitlement to any other TRA otherwise payable.

D.5. TRA-Related Provisions That Are Unchanged

Most of the statutory provisions related to trade readjustment allowances remain the same as they were before the 2002 Act. Except for the specific provision discussed above, the TRA provisions found in sections 231 through 234 of the 1974 Act (19 U.S.C. 2291 through 19 U.S.C. 2294) must be administered according to regulations published at 20 CFR 617.10 through 617.19 until those regulations are superseded by regulations implemented as a result of the enactment of the 2002 Act. In summary, the unchanged TRA-related provisions are:

1. Qualifying requirements for TRA that are unchanged are:

A. The worker's separation must have occurred between the impact date and the expiration date that are specified in the certification under which the worker is covered.

B. The worker must have had, during the 52-week period ending with the week in which the worker's qualifying separation occurred, 26 weeks of employment at wages of $30 or more per week in adversely affected employment with a single firm or subdivision of a firm. The statutory provisions regarding the definition of weeks of employment continue to apply.

C. The worker must be entitled to, or would be entitled to if the worker applied for, unemployment insurance for a week within the benefit period in which the worker's qualifying separation took place or which began, or would have begun, by reason of filing of a claim for unemployment insurance by such worker after such qualifying separation.

D. The worker would not be disqualified for extended compensation under the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of such Act for weeks in which the worker is not in approved training.

E. The worker is enrolled in an approved training program, or has completed the approved training program, or has a waiver from these requirements.

2. The prohibition against paying TRA to any worker who has failed to begin participation in training, or has ceased to participate in training, without justifiable cause, is unchanged.

3. The statutory provisions related to weekly amounts of TRA are unchanged.

4. The requirement that, in order to be eligible for additional TRA, a worker make a *bona fide* application for training within 210 days of the later of the worker's most recent qualifying separation or the first certification of eligibility to apply for adjustment assistance that covers the worker remains unchanged. Under the NAFTA–TAA program, this requirement was irrelevant because no waivers of the training requirement were permitted under that program. Therefore, a worker not only had to file a bona fide training plan, the worker was required to be enrolled in training within the 6/16-week time limits in order to receive any TRA. However, the possibility that a worker could receive a waiver of up to six-months' duration of the 8/16-week time limits implies that it is possible for a worker to file a bona fide training plan, and enroll in training, more than 210 days after the later of the dates mentioned above and before the worker's basic TRA entitlement is exhausted. Hence, this provision of the law is still applicable.

5. The statutory provisions in section 233(c) related to adjustment of amounts payable are unchanged.

6. The provisions in Section 234 on application of State laws are unchanged.

E. Job Retraining

E.1. Cap on Training Funds

Statutory Change: Section 117 of the 2002 Act amends section 236(a)(2)(A) of the 1974 Act by increasing the cap on training funds that can be allocated to the States to $220 million per year.

Administration: These funds must cover training, including necessary transportation and subsistence allowances, for all eligible workers, including those covered by certifications issued under the NAFTA–TAA program. States apply for training funds in the same way as before, by submitting form ETA 9023 through the appropriate Regional office.

E.2. Employer-Based Training

Statutory Change: Section 118(a) of the 2002 Act amends section 236(a)(5)(A) of the 1974 act by changing ''on-the-job training'' to ''employer-based training, including (i) on-the-job training and (ii) customized training.'' In addition, section 118(b) of the 2002 Act amends section 236(c)(8) of the 1974 Act to read ''the employer is provided reimbursement of not more than 50 percent of the wage rate of the participant, for the cost of providing the training and additional supervision related to the training.'' (**Note:** the previous language of section 236(c)(8), which is replaced, was ''the employer certifies to the Secretary that the employer will continue to employ such worker for at least 26 weeks after completion of such training if the worker desires to continue such employment and the employer does not have due cause to terminate such employment.'')

Finally, section 118(c) of the 2002 Act adds a subsection to the end of section 236 of the 1974 act as follows:

(c) For purposes of this section, the term ''customized training'' means training that is—

(1) Designed to meet the special requirements of an employer or group of employers;

(2) Conducted with a commitment by the employer or group of employers to employ an individual upon successful completion of the training; and

(3) For which the employer pays for a significant portion (but in no case less than 50 percent) of the cost of such training, as determined by the Secretary.

Administration: The previous requirement for on-the-job training, that the employer promise to continue to employ a worker in on-the-job training for at least 26 weeks after the completion of the training (provided that the worker wants to continue employment and the employer does not have due cause to terminate the employment) is not applicable to workers covered by certifications issued pursuant to petitions filed on or after November 4, 2002. The definitions of

on-the-job and customized training, and the approval criteria for such training, are now very similar to the equivalent definitions and approval criteria for such training under the dislocated worker program of WIA. On-the-job training is job training that occurs at a firm where the trainee is employed by the firm. Customized training is training designed to the specific requirements of a firm or group of firms, but conducted by a separate training vendor. In customized training, the trainee is not employed by the firm or group of firms for which the training is designed.

Current TAA regulations published at 20 CFR 617.23(c)(1) require that States give priority, insofar as possible, to on-the-job training when designing a reemployment program for an eligible worker. States shall also give priority, insofar as possible, to customized training for eligible workers. These forms of training ensure that workers obtain job skills which are necessary to obtain employment in a particular occupation.

E.3. Length of Training

The limit of 104 weeks on the length of a TAA-approved training program is not statutory. That limit is in the regulations (20 CFR 617.22(f)(2)). The new limits on weeks of TRA that are contained in the 2002 Act are interpreted to mean that Congress intended to match the maximum number of weeks of training with the maximum number of weeks of income support (UI plus TRA). The 2002 Act allows up to 26 weeks of TRA for workers who must complete some remedial education before beginning their retraining programs. Therefore, the intent of the statute is interpreted as allowing a maximum of 130 weeks of training in cases where workers require remedial education before they can enroll in occupational training. The number of weeks of training that are between 104 and 130 cannot be more than the number of weeks of the remedial training. For example, if a worker's remedial training lasts for only 10 weeks, then the maximum number of weeks of training for that worker would be 114 weeks. Even if the remedial training is more than 26 weeks, the maximum number of weeks for the total retraining plan cannot exceed 130.

E.4. Statutory Training-Related Provisions That Are Unchanged

Most of the statutory provisions related to job retraining remain the same as they were prior to the 2002 Act. Except for the two specific provisions discussed above, the job training provisions found in section 236 of the 1974 Act (19 U.S.C. 2296) shall be administered according to regulations published at 20 CFR 617.22 through 617.25 until those regulations are superseded by regulations implementing the 2002 Act. In summary, the unchanged training-related provisions are:

1. The six criteria for approving training which are found in section 236(a)(1) of the 1974 Act (19 U.S.C. 2296(a)(1));
2. The prohibitions against non-duplication of payments which are found in sections 236(a)(4), 236(a)(6), and 236(a)(7) of the 1974 Act (19 U.S.C. 2296(a)(4), 2296(a)(6), and 2296(a)(7));
3. The types of training that may be approved for eligible workers which are found in section 236(a)(5) of the 1974 Act (19 U.S.C. 2296(a)(5));
4. Supplementary assistance to defray the costs of transportation and subsistence expenses when training is provided in facilities which are not within the commuting distance of the worker's regular place of residence provided in section 236(b) of the 1974 Act (19 U.S.C. 2296(b));
5. Criteria for approving on-the-job and customized training (except for criterion 8 discussed above) which are found in section 236(c) of the 1974 Act (19 U.S.C. 2296(c));
6. The prohibition against finding a worker ineligible for unemployment insurance because of participation in approved training found in section 236(d) of the 1974 Act (19 U.S.C. 2296(d); and
7. The definition of the term ''suitable employment,'' used for the purposes of Section 236 only, found in section 236(e) of the 1974 Act (19 U.S.C. 2296(e).

F. Job Search Allowances

Statutory Change: Section 121 of the 2002 Act amends section 237 of the 1974 Act to read as follows:

Sec. 237. Job Search Allowances

(a) Job Search Allowance Authorized—

(1) In General.—An adversely affected worker covered by a certification issued under subchapter A of this chapter may file an application with the Secretary for payment of a job search allowance.

(1) Approval of Applications.—The Secretary may grant an allowance pursuant to an application filed under paragraph (1) when all of the following apply:

(A) Assist Adversely Affected Worker.—The allowance is paid to assist an adversely affected worker who has been totally separated in securing a job within the United States.

(B) Local Employment Not Available.—The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(C) Application.—The worker has filed an application for the allowance with the Secretary before—

(i) The later of—

(I) The 365th day after the date of the certification under which the worker is certified eligible; or

(II) The 365th day after the date of the worker's last total separation; or

(ii) The date that is the 182nd day after the date on which the worker concluded training, unless the worker received a waiver under section 231(c).

(b) Amount of Allowance.—

(1) In General.—An allowance granted under subsection (a) shall provide reimbursement to the worker of 90 percent of the cost of necessary job search expenses as prescribed by the Secretary in regulations.

(2) Maximum Allowance.—Reimbursement under this subsection may not exceed $1,250 for any worker.

(3) Allowance for Subsistence and Transportation.—Reimbursement under this subsection may not be made for subsistence and transportation expenses at levels exceeding those allowable under section 236(b)(1) and (2).

(c) Exception.—Notwithstanding subsection (b), the Secretary shall reimburse any adversely affected worker for necessary expenses incurred by the worker in participating in a job search program approved by the Secretary.

Adminstration: The new job search section is simply a rewriting of the previous job search section. The qualifying conditions are the same as before and the application deadlines are the same as before, except that the new limit for reimbursement per worker per certification is $1,250. Therefore, States must continue to administer job search allowances in accordance with regulations published at 20 CFR 617.30 through 617.35, except that the ''$800'' in section 617.34(b) is interpreted to be ''$1,250.'' until those regulations are superseded by new regulations.

G. Relocation Allowances

Statutory Change: Section 122 of the 2002 Act amends section 238 of the 1974 Act to read as follows:

Sec. 238. Relocation Allowances

(a) Relocation Allowance Authorized—

(1) In General.—Any adversely affected worker covered by a certification issued under subchapter A of this chapter may file an application for a relocation allowance with the Secretary, and the Secretary may grant the relocation allowance, subject to the terms and conditions of this section.

(2) Conditions for Granting Allowance.—A relocation allowance may be granted if all of the following terms and conditions are met:

(A) Assist An Adversely Affected Worker.—The relocation allowance will assist an adversely affected worker in relocating within the United States.

(B) Local Employment Not Available.—The Secretary determines that the worker cannot reasonably be expected to secure suitable

employment in the commuting area in which the worker resides.

(c) Total Separation.—The worker is totally separated from employment at the time the relocation commences.

(D) Suitable Employment Obtained.—The worker

(i) Has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which the worker wished to relocate; or

(ii) Has obtained a bona fide offer of such employment.

(E) Application.—The worker filed an application with the Secretary before—

(i) The later of—

(I) The 425th day after the date of the certification under subchapter A of this chapter; or

(II) The 425th day after the date of the worker's last total separation; or

(ii) The date that is the 182nd day after the date on which the worker concluded training, unless the worker received a waiver under section 231(c).

(b) Amount of Allowance.—The relocation allowance granted to a worker under subsection (a) includes—

(1) 90 percent of the reasonable and necessary expenses (including, but not limited to, subsistence and transportation expenses at levels not exceeding those allowable under section 235(b)(1) and (2) specified in regulations prescribed by the Secretary, incurred in transporting the worker, the worker's family, and household effects; and

(2) A lump sum equivalent to 3 times the worker's average weekly wage, up to a maximum payment of $1,250.

(c) Limitations.—A relocation allowance may not be granted to a worker unless—

(1) The relocation occurs within 182 days after the filing of the application for relocation assistance; or

(2) The relocation occurs within 182 days after the conclusion of training, if the worker entered a training program approved by the Secretary under section 236(b)(1) and (2).''

Administration: Like the amendment to the job search section, the amendment to the relocation section is simply a rewording of the previous language, except that the one-time payment limit is raised to $1,250. States shall continue to administer relocation allowances in accordance with regulations published at 20 CFR 617.40 through 617.48, except that ''$800'' found in section 617.45(a)(3) shall be interpreted as ''$1,250,'' until those regulations are superseded by new regulations.

H. Repeal of the NAFTA-TAA Program

Section 123 of the 2002 Act repeals subchapter D of chapter 2 of title II of the 1974 Act, as amended. Section 123 also establishes transition procedures that will be in effect for petitions filed before the effective date of the 2002 Act and workers currently receiving benefits and services under the NAFTA–TAA program.

H.1. Repeal of the NAFTA–TAA program

Statutory Change: Section 123(a) repeals the NAFTA–TAA program as follows:

(a) In General.—Subchapter D of chapter 2 of title II of such Act (19 U.S.C. 2331) is repealed.

Section 123(b) of the 2002 Act makes conforming amendments to other parts of the 1974 Act as follows:

(b) Conforming Amendments.—

(1) Section 225(b)(1) and (2) of the Trade Act of 1974 (19 U.S.C. 2275(B)(1) and (2)) is amended by striking ''or subchapter D'' each place it appears.

(2) Section 249A of such Act (19 U.S.C. 2322) is repealed.

(3) The table of contents of such Act is amended—

(A) By striking the item relating to section 249A; and

(B) By striking the items relating to subchapter D of chapter 2 of title II.

(4) Section 284(a) of such Act is amended by striking ''or section 250(c)''

H.2. Transition Procedures

Section 123(c) of the 2002 Act establishes an effective date and transition procedures as follows:

(c) Effective Date.—

(1) In General.—The amendments made by this section shall apply with respect to petitions filed under chapter 2 of title II of the Trade Act of 1974, on or after the date that is 90 days after the date of enactment of this Act.

(2) Workers Certified As Eligible Before Effective Date.—Notwithstanding subsection (a), a worker receiving benefits under chapter 2 of title II of the Trade Act of 1974 shall continue to receive (or be eligible to receive) benefits and services under chapter 2 of title II of the Trade Act of 1974, as in effect on the day before the amendments made by this section take effect under subsection (a), for any week for which the worker meets the eligibility requirements of such chapter 2 as in effect on such date.

Administration: Sections 123(c)(1) and 123(c)(2) of the 2002 Act set out the transition procedures for the NAFTA–TAA program. The operating instructions for the NAFTA–TAA program that are contained in General Administration Letter 7–94, along with changes 1, 2, and 3 thereto, continue in effect for petitions received by the State before the effective date of the 2002 Act, which is November 4, 2002. The Governor's agent that now receives NAFTA–TAA petitions must continue to receive NAFTA–TAA petitions, and perform preliminary investigations thereon, until the preliminary investigations are completed on all NAFTA–TAA petitions received on or before November 3, 2002. The State must immediately transmit all such petitions, and all information and documentation gathered during the preliminary investigation, to DOL. Any NAFTA–TAA petition *received* on or after November 4, 2002, is invalid and must be returned to the petitioners with an explanation of the provisions of the 2002 Act that make the petition invalid. The State must also include a blank petition for the new TAA program in case the petitioners want to file such a petition. This instruction also applies to NAFTA–TAA petitions *dated* prior to November 4, 2002, but *received* on or after that date; such petitions are not valid.

Eligible workers who are covered by NAFTA–TAA certifications resulting from petitions received on or before November 3, 2002, regardless of the date that such certifications are issued by DOL, must receive benefits and services under the provisions of the NAFTA–TAA program as in effect on November 3, 2002. Workers being served under NAFTA–TAA certifications are not eligible for waivers under the new waiver provisions established by the 2002 Act for the regular TAA program. In order to be eligible for TRA, such workers are also required to be enrolled in approved training by the end of the 16th week after the worker's most recent qualifying separation, or the end of the 6th week after the issuance of the certification, whichever is later. The new enrollment deadlines in the 2002 Act do not apply to such workers.

In fiscal years 2003 and 2004, there will continue to be a NAFTA–TAA funding stream separate from the TAA funding stream. States must continue to request funds from DOL for NAFTA–TAA benefits and services separately from their requests for funds for TAA benefits and services.

I. Coordination With WIA

Statutory Change: Section 119 of the 2002 Act amends section 235 of the 1974 Act as follows:

Section 235 of the Trade Act of 1974 (19 U.S.C. 2295) is amended by inserting before the period at the end of the first sentence the following: '', including the services provided through one-stop delivery systems described in section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c))''.

Statutory Change: Section 125 of the 2002 Act establishes a Declaration of Policy by the Congress as follows:

(a) Declaration of Policy.—Congress reiterates that, under the trade adjustment assistance program under chapter 2 of title II of the Trade Act of 1974, workers are eligible for transportation, childcare, and healthcare assistance, as well as other related assistance under programs administered by the Department of Labor.

Administration: States shall make every reasonable effort to secure for adversely-affected workers covered by certifications counseling, testing, and placement services, and supportive and other services, provided for under any other Federal law, including the Wagner-Peyser Act and the WIA.

In the One-Stop environment established by WIA, the concept of co-enrollment of trade-certified workers can be further enhanced and expanded to include multiple enrollments with a broader range of service delivery partners and programs. Multiple enrollment resources may include Wagner-Peyser activities, faith-based and community-based programs, vocational rehabilitation services, and veterans' programs.

The timely provision of core and intensive services to trade-impacted workers is an important step toward improving both the efficiency and the effectiveness of the Trade Act programs. Immediately beginning the process of needs assessment improves participation rates and allows individuals more time to consider all of the options available to them. Early intervention services that will be beneficial to trade-impacted workers may include orientation; initial assessment of skill levels, aptitudes, and abilities; provision of labor market information; job search assistance; and financial management workshops.

Properly implemented, co-enrollment or multiple-enrollment of trade-impacted workers in the programs offered in the One-Stop environment, as well as early provision of rapid response services, will enhance the workers' adjustment process and promote the most rapid possible return to employment for all workers. Co-enrollment or multiple-enrollment also allows trade-impacted workers to receive supportive services that may assist in a quicker transition to work.

J. Unamended Provisions of the 1974 Act

Many of the provisions of the 1974 Act remain unchanged; for completeness, these are listed below, along with the citation from the United States Code. Although not all of the provisions listed below are administered by the States, States shall administer applicable provisions according to the law and to regulations published at 20 CFR 617.

1. Section 221(b) (19 U.S.C. 2271(b)) which provides for public hearings on petitions.
2. Section 222(b)(2) (19 U.S.C. 2272(b)(2)) which provides special definitions for ''firm'' and ''directly competitive'' in relation to oil and gas exploration and production.
3. Section 223 (19 U.S.C. 2273) is unchanged except for changing ''60 days'' to ''40 days''. This section contains definitions of impact date and expiration date of a certification, along with requirements to publish notices in the **Federal Register.**
4. Section 224 (19 U.S.C. 2274) relating to studies by the Secretary whenever the U.S. International Trade Commission conducts an investigation with respect to an industry.
5. Section 225 (19 U.S.C. 2275) containing the requirements for notification to workers who are covered by certifications of benefits and services that they may be eligible to receive.
6. Section 232 (19 U.S.C. 2292) covering the determination of weekly amounts of TRA.
7. Section 234 (19 U.S.C. 2294) relating to the applicability of State unemployment insurance laws.
8. Section 239 (19 U.S.C. 2311) relating to agreements with States.
9. Section 240 (19 U.S.C. 2312) relating to program administration absent an agreement with a State.
10. Section 241 (19 U.S.C. 2313) relating to payments to States.
11. Section 242 (19 U.S.C. 2314) relating to liabilities of certifying and disbursing officers.
12. Section 243 (19 U.S.C. 2315) relating to fraud and recovery of overpayments.
13. Section 244 (19 U.S.C. 2316) relating to penalties for false statements and failure to disclose material facts.
14. Section 247 (19 U.S.C. 2319)—definitions.
15. Section 28 (19 U.S.C. 2320) relating to the Secretary's authority to prescribe regulations.
16. Section 249 (19 U.S.C. 2321) relating to the Secretary's subpoena power.

K. Program Reporting

Trade Act Participant Report (TAPR): The TAPR is unchanged. States must continue to report TAPR data according to instructions set forth in General Administration Letter 11–00.

Form ETA 563: Form ETA 563 is being revised; the new form will be available early in calendar year 2003. For the quarters ending September 30, 2002, and December 31, 2002, States must continue reporting data on form ETA 563 according to the instructions contained in ETA Handbook 315. New instructions will accompany the revised form.

The 2002 Act requires that the States report to the Secretary on each waiver and the reasons for issuing each waiver. Therefore, States should expect a new reporting form along with the revised form ETA 563. This reporting form will be very much like form ETA 9027, which was discontinued in 1997. This new form will also be available early in calendar year 2003, accompanied by full instructions.

L. Alternative Trade ADjustment Assistance for Older Workers

Section 124 of the 2002 Act strikes section 246 of the 1974 Act and replaces it with a demonstration project for alternative trade adjustment assistance for older workers. The statute allows the Secretary up to one year from the date of enactment (August 6, 2002) to establish the ATAA program. Therefore, these operating instructions do not include instructions for administering the ATAA program. However, for completeness and to give States some advance notice of future developments, the general outlines of the ATAA program are described below.

Petitioning workers must be given the opportunity to request that they be considered for certification under the ATAA program. In determining whether to certify a group of workers as eligible for ATAA, the following criteria are to be used:

1. Whether a significant number of the workers at the workers' firm are 50 years of age or older.
2. Whether the workers in the workers' firm possess skills that are not easily transferable.
3. The competitive conditions within the workers' industry.

An individual worker who is covered by a certification for ATAA must also satisfy all of the following individual qualifying criteria:

1. The worker is covered under a regular TAA certification.
2. The worker has obtained reemployment not more than 26 weeks after the date of the worker's separation from adversely-affected employment.
3. The worker is at least 50 years of age.
4. The worker earns not more that $50,000 per year in wages from reemployment.
5. The worker is employed on a full-time basis as defined by State law of the State in which the worker is reemployed.
6. The worker does not return to the employment from which the worker was separated.

Eligible workers who choose the benefits of ATAA may not receive three of the regular TAA benefits and services—training, TRA, and job search allowances. They may, however, receive relocation allowances if suitable employment is not reasonably available in the commuting area. Eligible workers who choose ATAA receive the following benefits:

1. 50 percent of the difference between the wages the worker receives from reemployment and the wages received by the worker at separation from adversely-affected employment. This payment is subject to the following limitaitons:

A. The payments may not be made for longer than two years.

B. The total of all payments may not exceed $10,000 during the two-year eligibility period.

2. The health insurance tax credit, only for the period in which the worker is participating in ATAA (not to exceed two years). Further guidance and instructions for the ATAA program will be transmitted to the States in the near future.

M. Health Insurance Tax Credit

Sections 201 and 202 of the 2002 Act establish a program of tax credits for health insurance costs. This program will be implemented through the cooperative efforts of the Department of Labor, the Department of Health and Human Services, and the Department of the Treasury (including the

Internal Revenue Service). Guidance and operating instructions for the HITC program will be issued separately.

6. *Action Required.* States are required to implement the amendments to the 1974 Act made by the 2002 Act and set forth in these operating instructions as of the effective date, November 4, 2002. States shall inform all appropriate staff of the contents of these instructions.

7. *Inquiries.* States should direct all inquiries to the appropriate ETA Regional office.

8. *Attachment.* Subtitle A of Title I, and Title II, of the Trade Act of 2002.[1]

[FR Doc. 02–28932 Filed 11–13–02; 8:45 am]

BILLING CODE 4510–30–M

[1] This *attachment* is available at the following Web site: *www.doleta.gov/tradeact/2002act_index.asp.*

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term FR Notice appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. Contact Barbara Barron at 202–693–9447.

Dated at Arlington, Virginia, this 7th day of November, 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–2002–009–C.
FR Notice: 67 FR 13196.
Petitioner: M & H Coal Company.
Regulation Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal is to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three (3) ten quart pails is not practical; and to use two (2) fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection. This is considered an acceptable alternative method for the Mercury Slope Mine. MSHA grants the petition for modification for the Mercury Slope Mine with conditions.

Docket No.: M–2002–014–C.
FR Notice: 67 FR 14977.
Petitioner: Laurel Creek Company, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use a permanently installed spring-loaded locking device on battery plug connectors, for mobile battery-powered machines used inby the last open crosscut, in lieu of a padlock to prevent the plug connector from accidental disengaging while under load; to install a warning tag that states ''Do Not Disengage Under Load'' on all battery plug connectors; and to instruct all persons who operate or maintain the battery-powered machines on the safe practices and provisions for complying with its proposed alternative method. This is considered an acceptable alternative method for the Mine No. 4. MSHA grants the petition for modification for the Mine No. 4 with conditions.

Docket No.: M–2002–025–C.
FR Notice: 67 FR 14978.
Petitioner: Rosebud Mining Company.
Regulation Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: Petitioner's proposal is to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations in lieu of using 240 pounds of rock dust. This is considered an acceptable alternative method for the Logansport Mine. MSHA grants the petition for modification for the temporary electrical installations provided the petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) at each of the temporary electrical installations at the Logansport Mine.

Docket No.: M–2002–032–C.
FR Notice: 67 FR 19285.
Petitioner: Fools Gold Energy Corporation.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices to secure battery plugs on mobile battery-powered machines to prevent unintentional loosening of the battery plugs from battery receptacles, and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the No. 4 Mine. MSHA grants the petition for modification for the No. 4 Mine with conditions.

Docket No.: M–2002–033–C.
FR Notice: 67 FR 19285.
Petitioner: Grace Mining, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices to secure battery plugs on mobile battery-powered machines to prevent unintentional loosening of the battery plugs from battery receptacles, and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the No. 4 Mine. MSHA grants the petition for modification for the No. 4 Mine with conditions.

Docket No.: M–2002–037–C.
FR Notice: 67 FR 19286.
Petitioner: Rivers Edge Mining, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use a threaded ring and a spring-loaded device in lieu of a padlock on all battery-plug connectors on mobile battery-powered machines

used inby the last open crosscut to prevent the plug connector from accidentally disengaging while under load; to install warning tags stating ''Do Not Disengage Plugs Under Load'' on all battery plug connectors on the battery-powered machines; and to instruct all persons who operate or maintain the battery-powered machines on the safe practices and provision for compliance with its proposed alternative method. This is considered an acceptable alternative method for the Rivers Edge Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of battery plugs at the Rivers Edge Mine with conditions.

Docket No.: M–2002–038–C.
FR Notice: 67 FR 19286.
Petitioner: Coastal Coal-West Virginia, LLC.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use continuous mining machines with nominal voltage power circuits not to exceed 2,400 volts at its Mine No. 4A East. This is considered an acceptable alternative method for the Mine No. 4A East. MSHA grants the petition for modification for the use of 2,400 volt continuous miners at the Mine No. 4A East with conditions.

Docket No.: M–2002–040–C.
FR Notice: 67 FR 31835.
Petitioner: Cook & Sons Mining, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices to secure battery plugs on mobile battery-powered machines to prevent unintentional loosening of the battery plugs from battery receptacles, and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the Spring Branch Mine #2, Nu Enterprise Mine, and the UZ Mine. MSHA grants the petition for modification for use at the Spring Branch #2 Mine, Nu Enterprise Mine, and the UZ Mine with conditions.

Docket No.: M–2001–031–C.
FR Notice: 66 FR 30232.
Petitioner: Aracoma Coal Company, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use a threaded ring and a spring-loaded device instead of padlocks on mobile battery-powered machines to prevent the plug connector from accidentally disengaging while under load; to place warning tags on all battery connectors; and instruct all battery machine operators on the safe practices and compliance with its alternative method. This is considered an acceptable alternative method for the Hernshaw Mine. MSHA grants the petition for modification for the Hernshaw Mine with conditions.

Docket No.: M–2001–032–C.
FR Notice: 66 FR 30232.
Petitioner: Aracoma Coal Company, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f)) of Part 18].
Summary of Findings: Petitioner's proposal is to use a threaded ring and a spring loaded device instead of padlocks on battery connectors on mobile battery-powered machines used inby the last open crosscut to prevent the plug connector from accidentally disengaging while under load; to place warning tags stating ''Do Not Disengage Plugs Under Load'' on all battery connectors; and instruct all battery machine operators on the safe practices and compliance with its alternative method. This is considered an acceptable alternative method for the Aracoma Alma No. 1 Mine. MSHA grants the petition for modification for the Aracoma Alma No. 1 Mine with conditions.

Docket No.: M–2001–034–C.
FR Notice: 66 FR 30233.
Petitioner: Newtown Energy, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded devices instead of padlocks on battery plugs on mobile battery-powered machines to prevent the threaded ring from unintentional loosening while under load, to place warning tags stating ''Do Not Disengage Plugs Under Load'' on all battery connectors on the battery-powered equipment, and to provide instructions to all persons on the safe practices and provisions for compliance when operating and maintaining the battery-powered machines. This is considered an acceptable alternative method for the Eagle Mine No. 1. MSHA grants the petition for modification for the Eagle Mine No. 1 with conditions.

Docket No.: M–2001–035–C.
FR Notice: 66 FR 30233.
Petitioner: Twentymile Coal Company.
Regulation Affected: 30 CFR 75.901(a).
Summary of Findings: Petitioner's proposal is to amend Paragraph 1 of the Proposed Decision and Order for its granted petition for modification, docket number M–1998–056–C, to include moving equipment from section to section within the mine and to perform temporary work in areas outby section loading points; and amend Paragraph 12 to allow 995-volt mobile equipment with cable reels to use either SHD–GC or 2,000-volt rated cables instead of only a SHD–GC cable. This is considered an acceptable alternative method for the Foidel Creek Mine. MSHA grants the petition for modification for the Foidel Creek Mine with conditions.

Docket No.: M–2001–036–C.
FR Notice: 66 FR 30233.
Petitioner: Twentymile Coal Company.
Regulation Affected: 30 CFR 75.701.
Summary of Findings: Petitioner's proposal is to use an alternate method of compliance for grounding of its diesel generator to provide power to electric powered equipment used to travel through the mine and to haul equipment and supplies. The petitioner proposes to ground the portable diesel generator to a low ground field and incorporate a ground fault system for the power circuits that would deenergize the mining equipment if a phase to frame fault occurs. This is considered an acceptable alternative method for the Foidel Creek Mine. MSHA grants the petition for modification for the Foidel Creek Mine with conditions.

Docket No.: M–2001–057–C.
FR Notice: 66 FR 34465.
Petitioner: Turris Coal Company.
Regulation Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal to fill the abandoned exhaust shaft with non-combustible materials and permanently seal it with a reinforced concrete cap, covering the cap and shaft with soil and up to 60 feet of coarse coal refuse during the expansion of North Coarse Refuse Pile, MSHA ID No. 1211–IL08–02664–05. This is considered an acceptable alternative method for the Elkhart Mine. MSHA grants the petition for modification for the Elkhart Mine with conditions.

Docket No.: M–2001–063–C.
FR Notice: 66 FR 38748.
Petitioner: Kentucky May Coal Company, Inc.
Regulation Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal is to fill its Refuse Disposal Fill ''A'' with refuse generated from its Arnold Fork Preparation Plant. The petitioner states that Refuse Fill ''A'' is a combined fill being constructed by the structural shell method, and that proposed modifications to Fill ''A'' to raise the proposed top of the fill from

elevation 1700 feet to elevation 1750 feet have been submitted to the Barbourville Regional Office for review and approval. The petitioner submits this petition to supplement the modifications since the proposed top of the fill is now above an abandoned underground mining operation in the Hazard No. 4 Coal Seam which is currently backfilled and the Coal Seam dips toward Face-up No. 2. The petitioner states that a four inch PVC Pipe has been installed in the lowest entry of Face-up No. 2 during backfilling operations to prevent the impoundment of water in the old mine works. The petitioner lists specific procedures in its petition that would be used when the proposed alternative method is implemented. This is considered an acceptable alternative method for the Kentucky May Coal Company's Arnold Fork Preparation Plant. MSHA grants the petition for modification for the Kentucky May Coal Company's Arnold Fork Preparation Plant with conditions.

Docket No.: M–2001–064–C.
FR Notice: 66 FR 38749.
Petitioner: DLR Mining, Inc.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to install carbon monoxide sensors as an early warning fire detection system in all belt entries used to course air through the belt entry to ventilate active working places. The sensors would be capable of providing both visual and audible alarm signals. This is considered an acceptable alternative method for the Nolo Mine. MSHA grants the petition for modification for the Nolo Mine with conditions.

Docket No.: M–2001–073–C.
FR Notice: 66 FR 38750.
Petitioner: Mettiki Coal, LLC.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage (2,400-volts) on its longwall face conveyor circuits and its shearer circuits when new longwall equipment is installed and has been inspected by MSHA, and to request that its previously granted petition, docket number M–98–032–C be revoked. This is considered an acceptable alternative method for the Mettiki Mine. MSHA grants the petition for modification for the 2,400-volt longwall equipment for the Mettiki Mine with conditions.

Docket No.: M–2001–074–C.
FR Notice: 66 FR 38750.
Petitioner: San Juan Coal Company.
Regulation Affected: 30 CFR 75.1726(a).
Summary of Findings: Petitioner's proposal is to use modified scoops to provide an elevated work platform for miners at the San Juan South Mine and the San Juan Deep Mine. This is considered an acceptable alternative method for the San Juan South Mine and the San Juan Deep Mine. MSHA grants the petition for modification for the San Juan South Mine and the San Juan Deep Mine with conditions. MSHA grants application for Relief to Give Effect to May 22, 2002.

Docket No.: M–2001–077–C.
FR Notice: 66 FR 41891.
Petitioner: San Juan Coal Company.
Regulation Affected: 30 CFR 75.804.
Summary of Findings: Petitioner's proposal is to use 4,160-volt cables for longwall equipment, with a symmetrical 3/C, 3/G, and 1/GC construction and a ground check conductor not smaller than a No. 16 (AWG). The high-voltage cables would be Cablec Anaconda brand 5KV 3/C type SHD+GC or similar 5,000-volt cable with a center ground check conductor, but otherwise manufactured to the ICEA Standard S–75–381 for Type SHD, three-conductor cables. The petitioner asserts that the cables would be MSHA accepted flame-resistant. This is considered an acceptable alternative method for the San Juan South Mine. MSHA grants the petition for modification for the San Juan South Undergound Mine with conditions. The petitioner's request for 30 CFR 75.804 for the San Juan Deep Mine is dismissed.

Docket No.: M–2001–087–C.
FR Notice: 66 FR 52155.
Petitioner: Maple Creek Mining, Inc.
Regulation Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal is to use a high-voltage, MSHA-accepted, flame-resistant cable with an internal ground check conductor smaller that No. 10 AWG and to provide training to all qualified electrical personnel before implementing its proposal. This is considered an acceptable alternative method for the High Quality Mine. MSHA grants the petition for modification for the use of high-voltage cables for high-voltage longwall equipment at the Maple Creek Mining, Inc., High Quality Mine longwall system with conditions. The high-voltage cables shall be 5KV, 3/C type SHD–GC or similar 5,000-volt cable with a center ground check conductor, but otherwise manufactured to the ICEA Standard S–75–381 for Type SHD, three-conductor cables, and MSHA-accepted flame-resistant. The cable construction shall be symmetrical 3/C, 3/G, and 1/GC. The ground check conductor shall not be smaller than a No. 16 AWG stranded conductor, and hands-on training shall be provided to all qualified electrical personnel who perform maintenance on the longwall equipment before the alternative method is implemented.

Docket No.: M–2001–089–C.
FR Notice: 66 FR 52155.
Petitioner: Maple Creek Mining, Inc.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and mine through oil and gas wells. This is considered an acceptable alternative method for the High Quality Mine. MSHA grants the petition for modification for the High Quality Mine with conditions.

Docket No.: M–2001–092–C.
FR Notice: 66 FR 52155.
Petitioner: 3–D Management Services, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use a threaded ring and a spring-loaded locking device instead of a padlock on mobile battery-powered machines to prevent the plug connector from accidentally disengaging while under load. This is considered an acceptable alternative method for the Tiny Creek No. 2 Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs at the Tiny Creek No. 2 Mine with conditions.

Docket No.: M–2001–097–C.
FR Notice: 66 FR 52156.
Petitioner: American Energy Corporation.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and mine through oil and gas wells at the Century Mine using specific procedures outlined in its petition for modification. This is considered an acceptable alternative method for the Century Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to Section 75.1700) plugged oil or gas wells penetrating the Pittsburgh No. 8 Coal Seam and other mineable coal seams at the Century Mine with conditions.

Docket No.: M–2001–101–C.
FR Notice: 66 FR 64992.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.500(d).
Summary of Findings: Petitioner's proposal is to use the following non-permissible low-voltage or battery powered electronic testing and diagnostic equipment inby the last open

crosscut: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, and electronic tachometers, and to use other testing and diagnostic equipment if approved by the District Office. The petitioner states that all other test and diagnostic equipment use in or inby the last open crosscut will be permissible. The petitioner has listed in this petition for modification specific procedures that would be followed when using this equipment. This is considered an acceptable alternative method for the Dugout Canyon Mine. MSHA grants the petition for modification for the use of low voltage or battery powered non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut, under controlled conditions, for testing and diagnosing the mining equipment at the Dugout Canyon Mine with conditions.

Docket No.: M–2001–102–C.
FR Notice: 66 FR 64993.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal is to use the following non-permissible low-voltage or battery powered electronic testing and diagnostic equipment inby the last open crosscut: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, and electronic tachometers, and may use other testing and diagnostic equipment if approved by the District Office. The petitioner states that all other test and diagnostic equipment used in or inby the last open crosscut will be permissible. This is considered an acceptable alternative method for the Dugout Canyon Mine. MSHA grants the petition for modification for the use of low-voltage or battery-powered non-permissible electronic testing and diagnostic equipment within 150 feet of pillar workings, for testing and diagnosing the mining equipment, under controlled conditions at the Dugout Canyon Mine with conditions.

Docket No.: M–2001–107–C.
FR Notice: 67 FR 1368.
Petitioner: Ohio County Coal Company, Inc.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to mine through oil and gas wells located within an approved mining area using the specific procedures outlined in its petition for modification. This is considered an acceptable alternative method for the Freedom Mine. MSHA grants the petition for modification with conditions, for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to Section 75.1700) plugged oil or gas wells penetrating the Western Kentucky No. 9 seam and other mineable coal seams for the Freedom Mine.

Docket No.: M–2001–108–C.
FR Notice: 67 FR 1368.
Petitioner: Addington, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use a spring-loaded locking device instead of a padlock on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the Pond Creek No. 1 Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs at the Pond Creek Mine No. 1 with conditions.

Docket No.: M–2001–115–C.
FR Notice: 66 FR 67551.
Petitioner: Centralia Mining.
Regulation Affected: 30 CFR 75.1200 (d) and (i).
Summary of Findings: Petitioner's proposal is to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably. This is considered an acceptable alternative method for the Skidmore Slope Mine. MSHA grants the petition for modification for the Skidmore Slope Mine with conditions.

Docket No.: M–2001–116–C.
FR Notice: 66 FR 67551.
Petitioner: Centralia Mining.
Regulation Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal is to revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever either a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. This is considered an acceptable alternative method for the Skidmore Slope Mine. MSHA grants the petition for modification for annual revisions and supplements of the mine map at the Skidmore Slope Mine with conditions.

Docket No.: M–2001–117–C.
FR Notice: 66 FR 67551.
Petitioner: Centralia Mining.
Regulation Affected: 30 CFR 75.1400(c).
Summary of Findings: Petitioner's proposal is to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use increased rope strength and secondary rope connection in place of such devices. This is considered an acceptable alternative method for the Skidmore Slope Mine. MSHA grants the petition for modification for the use of the hoist conveyance (gunboat) without safety catches at the Skidmore Slope Mine with conditions.

Docket No.: M–2001–120–C.
FR Notice: 66 FR 67552.
Petitioner: White County Coal, L.L.C.
Regulation Affected: 75.901(a).
Summary of Findings: Petitioner's proposal is to use a 200KW, 480-volt, diesel powered generator set with an approved diesel drive engine to power electrical equipment that would only move equipment in, out, and around the mine and to perform work in areas outby section loading points where equipment is not required to be maintained as permissible. This is considered an acceptable alternative method for the Pattiki Mine II. MSHA grants the petition for modification for the 480-volt, three-phase, 200KW diesel powered generator (DPG) set, supplying power to a 250 KVA three-phase

transformer and three-phase 480- and 995-volt power circuits at the Pattiki Mine II with conditions.

Docket No.: M–1999–035–C.

FR Notice: 64 FR 32552.

Petitioner: Sea ''B'' Mining Company.

Regulation Affected: 30 CR 75.1710–1(a).

Summary of Findings: Petitioner's proposal is to amend the Proposed Decision and Order for its previously granted petition, docket number M–98–033-C, to include the following equipment: three center-driven Joy 21SC shuttle cars, Serial Nos. ET10956, ET11195, ET14880; Long Airdox Scoop 482, Serial No. 482–2229; and Fletcher Roof Bolting Machine, Model RRII–15 W/T–Bar ATRS, Serial No. 96053. The petitioner asserts that using canopies on this equipment in mining heights less that 46 inches would result in a diminution of safety to the miners. This is considered an acceptable alternative method for the Silver Creek Mine. MSHA grants the petition for modification for the Silver Creek Mine with conditions.

Docket No.: M–2001–001–M.

FR Notice: 66 FR 9725.

Petitioner: New Tech Oil Company.

Regulation Affected: 30 CFR 57.11050.

Summary of Findings: Petitioner's proposal is to use its hoist and ladder man-way as two separate escapeways. This is considered an acceptable alternative method for the North Tisdale Shaft #1 Mine. MSHA grants the petition for modification for the North Tisdale Shaft #1 Mine with conditions.

Docket No.: M–2001–002–M.

FR Notice: 66 FR 9725.

Petitioner: New Tech Oil Company.

Regulation Affected: 30 CFR 57.19054.

Summary of Findings: Petitioner's proposal is to use bridge strand wire rope in lieu of locked coil wire rope on the mine hoist. This is considered an acceptable alternative method for the North Tisdale Shaft No. 1 Mine. MSHA grants the petition for modification for the North Tisdale Shaft No. 1 Mine with conditions.

[FR Doc. 02–28918 Filed 11–13–02; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Open Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of a meeting of the Advisory Committee on Construction Safety and Health (ACCSH).

SUMMARY: ACCSH will hold a meeting on December 5–6, 2002, in Washington, DC. This meeting is open to the public.

Time and Date: ACCSH will meet from 8 a.m. to 4:30 p.m., Thursday, December 5, and from 8:30 a.m. to noon, Friday, December 6. *See* **SUPPLEMENTARY INFORMATION** section for meeting times and dates of ACCSH work groups.

Place: The ACCSH meeting will be held in Rooms N–3437 A–C, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC. *See* **SUPPLEMENTARY INFORMATION** section for room locations in the Frances Perkins Building for ACCSH work group meetings.

FOR FURTHER INFORMATION CONTACT: *For general information about ACCSH and ACCSH meetings:* Jim Boom, OSHA, Directorate of Construction, Room N–3476, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1839. *For information about submission of comments, requests to speak, and special accommodations for the meeting:* Veneta Chatmon, OSHA, Office of Public Affairs, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. Electronic copies of this **Federal Register** notice, as well as information about ACCSH work groups and other relevant documents, are available at OSHA's Webpage on the Internet at *http://www.OSHA.gov*.

SUPPLEMENTARY INFORMATION: ACCSH will meet December 5–6, 2002, in Washington, DC. This meeting is open to the public. The agenda for this meeting includes:

Thursday, December 5, 2002

- Directorate of Construction—Update
- Partnerships, Alliances, Agreements
- Remarks—Assistant Secretary Henshaw
- Subpart V—Power Transmission and Distribution
- Subpart N—Crane Workgroup Report
- Negotiated Rulemaking—Subpart N—Cranes and Derricks
- Manual for Uniform Traffic Control Devices (MUTCD)
- Hearing Conservation
- Silica
- Proposed Assigned Protection Factor (APF)—Rulemaking

Friday, December 6, 2002

- Subpart R—Steel Erection
- Highway Work Zone Safety

All ACCSH meetings and those of its work groups are open to the public. An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, at the address above; telephone (202) 693–2350. Individuals needing special accommodation should contact Veneta Chatmon no later than November 29, at the address above.

Interested parties may submit written data, views or comments, preferably with 20 copies, to Veneta Chatmon at the address above. OSHA will provide submissions received prior to the meeting to ACCSH members and will include all submissions in the record of the meeting.

Attendees may also request to make an oral presentation by notifying Veneta Chatmon no later than November 25 at the address above. The request must state the amount of time desired, the interest represented by the presenter (*e.g.*, the names of the business, trade association, government Agency) if any, and a brief outline of the presentation. The chair of ACCSH may grant the request at his discretion and as time permits.

The following ACCSH work groups will meet in the Francis Perkins Building:

- Subpart N—Cranes—8 a.m. to 5 p.m., Tuesday, December 3, and 8 a.m. to 5 p.m., Wednesday, December 4, in Room N–3437 A&B.

For further information on meetings of ACCSH work groups, please contact Jim Boom at the address above or look on OSHA's webpage at *http://www.osha.gov*.

Authority: John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed in Washington, DC, on this 7th day of November, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–28931 Filed 11–13–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemptions 2002–45 & 2022–46; Exemption Application Nos. D–10924 & D–10925]

Deutsche Bank AG (DB) Located in Germany, With Affiliates in New York, NY, and Other Locations & Barclays Global Investors, N.A. (BGI) Located in San Francisco, CA

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor (the Department).

ACTION: Notice of technical correction.

On September 23, 2002, the Department published PTE 2002–45 and PTE 2002–46 in the **Federal Register**, at 67 FR 59564 and 67 FR 59569, respectively. PTE 2002–45 and PTE 2002–46 permit securities lending to certain DB or BGI affiliates by employee benefit plans for which DB or BGI acts as securities lending agent or subagent.

On page 59567 and 59571, respectively, of the notices granting PTE 2002–45 and PTE 2002–46, the Department hereby corrects the last sentence of subparagraph (p)(2) of Section II to read as follows:

In addition, none of the entities described above are formed for the sole purpose of making loans of securities; and

On page 59567 and 59571, respectively, of the notices granting PTE 2002–45 and PTE 2002–46, the Department hereby inserts the following subparagraph (p)(3) of Section II to read as follows:

(3) In the case of two or more Client Plans invested in a Commingled Fund, whether or not through an entity described in (p)(1) or (p)(2), the $50 million requirement shall be deemed satisfied if 50 percent or more of the units of beneficial interest in such Commingled Fund are held by investors each having total net assets of at least $50 million. Such investors may include Client Plans, entities described in (p)(1) or (p)(2), or other investors that are not employee benefit plans covered by section 406 of ERISA, section 4975 of the Code, or section 8477 of FERSA.

EFFECTIVE DATE: This technical correction to PTE 2002–45 and PTE 2002–46 is effective as of September 23, 2002, the date those exemptions were published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz or Karen Lloyd of the Department, telephone (202) 693–8540. (This is not a toll-free number).

Signed at Washington, DC, this 8th day of November, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–28935 Filed 11–13–02; 8:45 am]

BILLING CODE 4520–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–141]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that GeoTech Chemical Company, LLC, of Tallmadge, Ohio, has applied for an exclusive patent license for ''Ferromagnetic Conducting Lignosulfonic Acid-Doped Polyaniline Nanocomposites,'' U.S. Serial No. 09/994,996, and ''Corrosion Prevention of Cold Rolled Steel Using Water Dispersible Lignosulfonic AcidDoped Polyaniline,'' U.S. Serial No. 09/903,260, both of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. These technologies implement a technology that has been previously exclusively licensed to GeoTech. Written objections to the prospective grant of a license should be sent to John F. Kennedy Space Center.

DATES: Responses to this Notice must be received within 15 days from date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: November 7, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–28908 Filed 11–13–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Recruiting and Educating Librarians for the 21st Century Guidelines and Application Forms; Submission for OMB Review, Comment Request

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice of requests for new information collection approval.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Currently, the Institute of Museum and Library Services is soliciting comment concerning extending collection entitled, Technology Survey for Libraries and Museums. A copy of this proposed form, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Public and Legislative Affairs, Mamie Bittner at (202) 606–8339. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

DATES: Comments must be received by December 16, 2002. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

ADDRESSES: For a copy of the form contact: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 510, Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

I. Background

Pub. L. 104–208 enacted on September 30, 1996 contains the former Museum Services Act and the Library Services and Technology Act, a reauthorization. Pub. L. 104–208 authorizes the Director of the Institute of Museum and Library Services to make

grants to improve museum and library service throughout the United States.

Agency: Institute of Museum and Library Services.

Title: Recruiting and Educating Librarians for the 21st Century.

OMB Number: None.

Agency Number: 3137.

Frequency: One-time.

Affected Public: Libraries.

Number of Respondents: 120.

Estimated Time Per Respondent: 40 hours.

Total Burden Hours: 4800.

Total Annualized capital/startup costs: n/a.

Total Annual Costs: n/a.

FOR FURTHER INFORMATION CONTACT: Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 02–28878 Filed 11–13–02; 8:45 am]

BILLING CODE 7036–01–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:

Literature: December 2–3, 2002, Room 714 (Access and Heritage & Preservation categories). A portion of this meeting, from 11 a.m. to 12:30 p.m. on December 3rd, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on December 2nd and from 9:30 a.m. to 11 a.m. and 12:30 p.m. to 3 p.m. on December 3rd, will be closed.

Folk & Traditional Arts: December 3–6, 2002, Room 716 (Access and Heritage & Preservation categories). A portion of this meeting, from 11 a.m. to 12:30 p.m. on December 5th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on December 3rd and 4th, from 9 a.m. to 11 a.m. and 12:30 p.m. to 6:30 p.m. on December 5th, and from 9 a.m. to 5:30 p.m. on December 6th, will be closed.

Museums: December 10–12, 2002, Room 716 (Access and Heritage & Preservation categories). A portion of this meeting, from 1:30 p.m. to 2:30 p.m. on December 12th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on December 10th and 11th, and from 9 a.m. to 1:30 p.m. and 2:30 p.m. to 4:30 p.m., on December 12th, will be closed.

Arts Education: December 16–19, 2002, Room 716 (Arts Learning category). A portion of this meeting, from 1 p.m. to 2 p.m. on December 19th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on December 16th and 18th, from 9 a.m. to 6:30 p.m. on December 17th, and from 9 a.m. to 1 p.m. and 2 p.m. to 3:45 p.m. on December 19th, 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: November 6, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–28879 Filed 11–13–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 56315 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information

unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for Science and Technology Centers (STC): Integrative Partnerships.

OMB Control No.: 3145–New.

Proposed Project: The Science and Technology Centers (STC): Integrative Partnerships Program supports innovation in the integrative conduct of research, education and knowledge transfer. Science and Technology Centers build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. STCs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

STCs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. STCs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

Centers selected will be required to submit annual reports on progress and plans, which will be used as a basis for perofmrance review and determining the level of continued funding. To support this review and the management of a Center, STCs will be required to develop a set of management and performance indicators for submission annually to NSF via an NSF evaluation technical assistance contractor. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degree granted to students involved in Center activities; descriptions of significant advances and other outcomes of the STC effort. Part of this reporting will take the form of a database which will be owned by the institution and eventually made available to an evaluation contractor. This database will capture specific information to demonstrate progress towards achieving the goals of the program. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities; (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) diversity, (6) management and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

Use of the Information: NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

Estimate of Burden: In the first year, for the anticipated six centers' awards time estimate is total of 600 hours. In the subsequent years time estimate is 450 hours.

Respondents: Non-profit institutions; federal government.

Estimated Number of Responses per Report: One from each of the six centers.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) way8s to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: November 7, 2002.

Teresa R. Pierce,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–28870 Filed 11–13–02; 8:45 am]

BILLING CODE 2555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027]

Notice of Consideration of Amendment Request for Sequoyah Fuels Corp., Gore, OK and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to materials license SUB–1010 issued to Sequoyah Fuels Corp. (SFC), to possess byproduct material as defined in the Atomic Energy Act (AEA) Section 11e.(2) at its site near Gore, Oklahoma.

On January 5, 2001, SFC requested that the Nuclear Regulatory Commission (NRC) determine if waste material from the solvent extraction process at its site could be classified as AEA 11e.(2) byproduct material. By Staff Requirements Memorandum to SECY–02–0095, dated July 25, 2002, the Commission concluded that some of the waste at the SFC site could properly be classified as AEA 11e.(2) byproduct material. By letter dated September 30, 2002, SFC requested license SUB–1010 be amended to possess 11e.(2) byproduct material. An NRC administrative review found the request for license amendment (LA) acceptable to begin a technical review. If NRC approves the amendment request, SFC will be required to submit a reclamation plan for the site that meets the requirements of Appendix A to 10 CFR 40. If that plan is approved and SFC remediates the site to the specified criteria, the U.S. Department of Energy would become the owner of the land and responsible for long term stewardship under provisions of Title II to the Uranium Mill Tailings Radiation Control Act.

If the NRC approves this LA, the approval will be documented in an amendment to NRC license SUB–1010. NRC considers the amendment to be administrative in nature, in that the Commission has determined that material possessed by SFC is 11e.(2) byproduct material and the license amendment will give SFC formal permission to possess that material. There will be no changes in the management of the facility, changes to the facility itself or to license conditions or procedures as a result of the proposed amendment that could impact public health, safety or the environment. Therefore, neither a Safety Evaluation Report nor an environmental evaluation will be prepared for the amendment.

NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within

the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738;, between 7:45 a.m. and 4:15 p.m. Federal workdays; or

2. By mail, telegram, or facsimile addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Services Branch. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov.*

In accordance with 10 CFR § 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Sequoyah Fuels Corporation, PO Box 610, Gore, Oklahoma, Attention: Mr. John Ellis, and;

2. The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m. Federal workdays, or by mail, addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov.*

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

FOR FURTHER INFORMATION: The application for amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room on the NRC Web site *http://www.nrc.gov/reading-rm.html.* Questions with respect to this action should be referred to Mr. Myron Fliegel, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6629.

Dated at Rockville, Maryland, this 6th day of November, 2002.

For the Nuclear Regulatory Commission.

Scott W. Moore,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–28903 Filed 11–13–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08838]

Notice of Consideration of Amendment Request for the U.S. Army's Jefferson Proving Ground Facility at Madison, IN, and Opportunity for Providing Comments and Requesting a Hearing

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Material License No. SUB–1435 issued to the U.S. Army (the licensee), to authorize decommissioning of its Jefferson Proving Ground (JPG) facility in Madison, Indiana.

The U.S. Army submitted a revised decommissioning plan (DP) on June 27, 2002, to decommission JPG with restricted release. An NRC administrative review, documented in a letter to the U.S. Army dated October 1, 2002, found the DP acceptable to begin a technical review.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License No. SUB–1435. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and either an Environmental Assessment or Environmental Impact Statement.

II. Opportunity To Provide Comments

In accordance with 10 CFR 20.1405, the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of a DP, and will accept comments concerning this decommissioning proposal and its associated environmental impacts. Comments with respect to this action should be provided in writing within 30 days of this notice and addressed to Tom McLaughlin, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–5869, fax number (301) 415–5398, e-mail: *tgm@nrc.gov.* Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

III. Opportunity To Request a Hearing

NRC also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Whether or not a person has or intends to provide comments as set out in section II above, pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be

also transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov.*

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, U.S. Army Soldier and Biological Chemical Command, 5183 Black Hawk Road, Aberdeen Proving Ground, MD 21010–5423, Attention: Dr. John Ferriter, and;

2. The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, One White flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov.*

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Further Information

The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* The DP is in ADAMS in two parts with part 1 at ML021930415 and part 2 at ML021930461. The acceptance letter for the DP is in ADAMS at ML022730012. Any questions with respect to this action should be referred to Tom McLaughlin, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–5869. Fax: (301) 415–5398.

Dated in Rockville, Maryland, this 5th day of November, 2002.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–28901 Filed 11–13–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08794]

Notice of Consideration of Amendment Request for the Molycorp Facility at York, PA, and Opportunity for Providing Comments and Requesting a Hearing

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Materials License SMB–1408 issued to Molycorp, Inc., (Molycorp), to allow for an alternate decommissioning schedule for its York, PA, site. Molycorp's license required Molycorp to decommission by June 2002, which is within 2 years of the date that the decommissioning plan was approved. Molycorp was granted a three month extension from the regulatory requirements of the Timeliness Rule in order to determine if there is a more efficient way to complete decommissioning the remaining portion of the site. Molycorp submitted an alternate decommissioning schedule in a letter dated September 30, 2002. Molycorp proposes to use a phased approach where a new site characterization plan is developed and submitted to NRC for concurrence prior to the resumption of remediation. Molycorp is to submit a revised remediation schedule by February 15, 2003.

If the NRC approves this request, the approval will be documented in a license amendment to NRC License SMB–1408. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a safety evaluation report.

II. Opportunity To Request a Hearing

NRC also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Whether or not a person has or intends to provide comments as set out in section II above, pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov.*

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Molycorp, Inc., PO Box 469, Questa, NM 87556–0469, Attention: Ray Cherniske, and,

2. The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov.*

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with

particular reference to the factors set out in § 2.1205(h);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

III. Further Information

The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* The June 17, 2002, request from Molycorp for an extension from the regulatory requirements of the Timeliness Rule is in ADAMS at ML021700600. The granting of the extension from the Timeliness Rule on June 20, 2002, is in ADAMS at ML021680158. The report of a meeting at NRC headquarters with Molycorp to discuss its proposed alternate decommissioning schedule is in ADAMS at ML022680692. Any questions with respect to this action should be referred to Tom McLaughlin, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–5869. Fax: (301) 415–5398.

Dated in Rockville, Maryland, this fifth day of November 2002.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–28902 Filed 11–13–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–31]

Yankee Atomic Electric Company, Independent Spent Fuel Storage Installation; Issuance of Environmental Assessment and Finding of No Significant Impact for a Proposed Exemption

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption to Yankee Atomic Electric Company (YAEC or licensee), pursuant to 10 CFR 72.7, from specific provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 10 CFR 72.214. The licensee is planning to use the NAC–MPC storage system to store spent nuclear fuel from the decommissioning reactor. The requested exemption would allow YAEC to deviate from the approved contents specified in the NAC–MPC Certificate of Compliance No. 1025 (CoC or Certificate) to store: (1) Fuel with assembly weights up to 950 pounds; (2) fuel assemblies with unique design features; (3) non-intact fuel in damaged fuel cans; and (4) specific re-caged fuel assemblies in the NAC–MPC dry spent fuel storage systems at the Yankee Nuclear Power Station.

In a letter dated May 15, 2002, the designer of the NAC–MPC system, NAC International, requested an amendment to CoC No. 1025 to incorporate the additional fuel assembly configurations as approved contents for the storage system. That request was supplemented on October 3, 2002. The information provided in the amendment request, as supplemented, corresponds with the YAEC exemption request and provides the safety basis for storing these additional fuel assembly configurations.

Environmental Assessment (EA)

Identification of Proposed Action

By letter dated October 10, 2002, YAEC requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 10 CFR 72.214 to deviate from the approved contents specified in CoC No. 1025 for the NAC–MPC storage system. YAEC has informed the NRC of its plans to store spent nuclear fuel under the general licensing provisions of 10 CFR Part 72. The licensee has begun loading spent fuel into the NAC–MPC system at an Independent Spent Fuel Storage Installation located at the Yankee Nuclear Power Station near Rowe, Massachusetts.

By exempting YAEC from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 10 CFR 72.214, YAEC will be authorized to store additional specific fuel assembly configurations.

The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7. The NRC staff has reviewed the exemption request and determined that storage of the additional fuel assembly configurations are consistent with the safety analyses previously reviewed for the NAC–MPC system, and would have no impact on the design basis and would not be inimical to public health and safety.

Need for the Proposed Action

YAEC completed loading the first NAC–MPC at the Yankee Nuclear Power Station on June 26, 2002. The licensee is proceeding with unloading of fuel assemblies from the spent fuel pool and loading of the assemblies into additional NAC–MPC systems. The spent fuel pool uses a two tier rack system for fuel storage. The licensee has completed removal of all of the fuel from the upper rack, which has enabled a detailed inspection of the fuel stored in the lower rack. The licensee identified some fuel assembly types and configurations that were not addressed in the NAC–MPC storage system Final Safety Analysis Report. This prompted the NAC–MPC designer to submit an amendment application to NRC for the NAC–MPC CoC to incorporate the additional fuel configurations identified in the lower pool rack.

YAEC requested this exemption to store the additional fuel assembly configurations in an effort to continue the removal of spent fuel from the spent fuel pool into the NAC–MPC storage systems using the same experienced and trained individuals involved in loading the previous NAC–MPC systems. The exemption would likely minimize personnel exposure by continuing to use the same individuals and by implementing lessons learned from the previous loading activities.

Environmental Impacts of the Proposed Action

YAEC requested the exemption to store additional fuel assembly configurations to enable transfer of all spent fuel from the spent fuel pool to the NAC–MPC dry spent fuel storage system. The staff performed a safety evaluation of the proposed exemption. NRC staff reviewed the analysis provided in the NAC–MPC amendment application addressing storage of additional specific fuel assembly configurations. The safety evaluation performed by the staff concludes that the NRC has reasonable assurance that storage of the additional fuel configurations has minimal impact on off-site doses, results in a dose savings to workers, and meets the requirements of 10 CFR 72.104, 10 CFR 72.106 and 10 CFR 20.1301, and is therefore acceptable.

Therefore, the environmental impact of storing the additional specific fuel assemblies is no greater than the environmental impact already assessed in the initial rulemaking for the NAC–MPC storage system (65 FR 12444, dated March 9, 2000).

The proposed action will not significantly increase the probability or consequences of the analyzed accidents, no changes are being made to the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation

exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. Therefore, the staff has determined that there is no reduction in the ability of the system to perform its safety function, nor significant environmental impacts, as a result of storing the additional fuel assembly configurations.

Alternative to the Proposed Action

Since there is no significant environment impact associated with the proposed action, alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. Denial of the exemption request will have the same environmental impact, but would result in a potential dose increase to workers involved in cask loading activities.

Agencies and Persons Consulted

On November 4, 2002, Mr. Jim Muckerheide, Nuclear Engineer, Nuclear Safety of the Massachusetts Emergency Management Agency was contacted about the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting the exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 10 CFR 72.214 and allowing YAEC to store additional specific fuel assembly configurations in the NAC–MPC storage system will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not warranted.

The request for exemption was docketed under 10 CFR Part 72, Docket 72–31. For further details with respect to this action, see the exemption request dated October 10, 2002. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of November, 2002.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor, Sr.

Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–28904 Filed 11–13–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 11, 18, 25, December 2, 9, 16, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 11, 2002

Thursday, November 14, 2002

2 p.m.—Discussion of Management Issues (Closed—Ex. 2).

Week of November 18, 2002—Tentative

Thursday, November 21, 2002

10 a.m.—Briefing on Proposed Rulemaking to Add New Section 10 CFR 50.69, ''Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors'' (Public Meeting) (Contact: Eileen McKenna, (301) 415–2189, or Timothy Reed, (301) 415–1462).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

2 p.m.—Discussion of Security Issues (Closed—Ex. 1).

Week of November 25, 2002—Tentative

Tuesday, November 26, 2002

9:30 a.m.—Discussion of Security Issues (Closed—Ex. 1).

Week of December 2, 2002—Tentative

Wednesday, December 4, 2002

10 a.m.—Briefing on Decommissioning Bankruptcy Issues (Closed—Ex. 4 & 9).

Week of December 9, 2002—Tentative

There are no meetings scheduled for the Week of December 9, 2002.

Week of December 16, 2002—Tentative

Wednesday, December 18, 2002.

9:30 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, (301) 415–7360).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll, (301) 415–1662.

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Dated: November 7, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46782; File No. SR–NYSE–2002–53]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto on a Pilot Basis by the New York Stock Exchange, Inc. Amending NYSE Rule 431, Margin Requirements for Security Futures

November 7, 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 23, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 6, 2002, the NYSE filed an amendment to the proposed rule change.[3] The Commission is publishing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant

this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval of the proposed rule change, as amended, on a pilot basis for sixty days beginning on the date of this order.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing amendments to NYSE Rule 431 (''Margin Requirements'') to establish margin requirements for security futures contracts. The proposed amendments to the Exchange's existing margin rule are intended to be consistent with the customer margin rules already adopted by the SEC and the Commodity Futures Trading Commission (''CFTC''), and those filed by other self-regulatory organizations (''SROs'') regarding security futures.

The proposed amendments would: (1) Permit customer margining of security futures contracts, and establish initial and maintenance margin levels for security futures contracts; (2) allow initial and maintenance margin levels for offsetting positions involving security futures contracts to be lower than would be required if margined separately; (3) allow for a Market Maker exclusion for proprietary trades of a Security Futures Dealer (''SFD'') and allow for ''good faith'' margin treatment for the accounts of approved options specialists, market makers, and other specialists; (4) provide definitions relative to security futures for the application of this rule; (5) provide that security futures contracts transacted in a futures account shall not be subject to any provisions of NYSE Rule 431; (6) provide that money market mutual funds, as defined in Rule 2a-7[4] under the Investment Company Act of 1940 (the ''ICA''),[5] may be used to satisfy margin requirements for security futures contracts provided that certain conditions are met; (7) require that security futures contracts transacted in a securities account be subject to all other provisions of NYSE Rule 431, in particular NYSE Rule 431(f)(8)(B) (''Day Trading''); and (8) permit members and member organizations for which the Exchange is the Designated Examining Authority (''DEA'') to participate in the trading of security futures contracts when trading commences. Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

Rule 431 (''Margin Requirements'')

Rule 431. (a) For purposes of this Rule, the following terms shall have the meanings specified below:

(1) The term ''current market value'' means the total cost or net proceeds of a security on the day it was purchased or sold or at any other time the preceding business day's closing price as shown by any regularly published reporting or quotation service, *except for security futures contracts (see Section (f)(10) (C)(ii)).* If there is no closing price, a member organization may use a reasonable estimate of the market value of the security as of the close of business on the preceding business day.

Rule 431 (a)(2) through (a)(3) unchanged.

(4) The term ''equity'' means the customer's ownership interest in the account, computed by adding the current market value of all securities ''long'' and the amount of any credit balance and subtracting the current market value of all securities ''short'' and the amount of any debit balance. *Any variation settlement received or paid on a security futures contract shall be considered a credit or debit to the account for purposes of equity.*

(5) The term ''exempted security'' or ''exempted securities'' has the meaning as in section 3(a)(12) of the Securities Exchange Act of 1934 *(the ''Exchange Act'' or ''SEA'').*

(6) The term ''margin'' means the amount of equity to be maintained on a security position held or carried in an account.

(7) The term ''person'' has the meaning as in section 3(a)(9) of the [Securities Exchange Act of 1934] *Exchange Act.*

(8) The term ''basket'' shall mean a group of stocks that the Exchange or any national securities exchange designates as eligible for execution in a single trade through its trading facilities and that consists of stocks whose inclusion and relative representation in the group are determined by the inclusion and relative representation of their current market prices in a widely-disseminated stock index reflecting the stock market as a whole.

Initial Margin

(b) For the purpose of effecting new securities transactions and commitments, the customer shall be required to deposit margin in cash and/or securities in the account which shall be at least the greater of:

(1) The amount specified in Regulation T of the Board of Governors of the Federal Reserve System *or Rules 400 through 406 of the Exchange Act or Rules 41.42 through 41.48 of The Commodity Exchange Act (''CEA'')*, or

(2) The amount specified in section (c) of this Rule, or

(3) Such greater amount as the Exchange may from time to time require for specific securities, or

(4) Equity of at least $2,000 except that cash need not be deposited in excess of the cost of any security purchased (this equity and cost of purchase provision shall not apply to ''when distributed'' securities in a cash account). The minimum equity requirement for a ''pattern day trader'' is $25,000 pursuant to paragraph (f)(8)(B)(iv)(1) of this Rule.

Withdrawals of cash or securities may be made from any account which has a debit balance, ''short'' position or commitments, provided it is in compliance with Regulation T of the Board of Governors of the Federal Reserve System *and Rules 400 through 406 of the Exchange Act and Rules 41.42 through 41.48 of the CEA* and after such withdrawal the equity in the account is at least the greater of $2,000 ($25,000 in the case of ''pattern day traders'') or an amount sufficient to meet the maintenance margin requirements of this Rule.

Maintenance Margin

(c) The margin which must be maintained in all accounts of customers, except for cash accounts subject to Regulation T unless a transaction in a cash account is subject to other provisions of this rule, shall be as follows:

(1) 25% of the current market value of all securities *except for security futures contracts,* ''long'' in the account; plus

(2) $2.50 per share or 100% of the current market value, whichever amount is greater, of each stock ''short'' in the account selling at less than $5.00 per share; plus

(3) $5.00 per share or 30% of the current market value, whichever amount is greater, of each stock ''short'' in the account selling at $5.00 per share or above; plus

(4) 5% of the principal amount or 30% of the current market value, whichever amount is greater, of each bond ''short'' in the account.

(5) The minimum maintenance margin levels for security futures contracts, long and short, shall be 20% of the current market value of such contract. (See

Director, Division of Market Regulation, Commission, dated November 5, 2002 (''Amendment No. 1''). Amendment No. 1 replaced the original rule filing in its entirety. Amendment No. 1 also proposed that the changes be for a sixty-day pilot, and requested accelerated approval of the proposed rule change.

[4] 17 CFR 270.2a–7.

[5] 15 U.S.C. 80a *et seq.*

paragraph (f) of this Rule for other provisions pertaining to security futures contracts.)

Rule 431 (d) through (e)(5) unchanged.

(e)(6)(A) Broker/Dealer Accounts.—A member organization may carry the proprietary account of another broker/dealer, which is registered with the Securities and Exchange Commission, upon a margin basis which is satisfactory to both parties, provided the requirements of Regulation T of the Board of Governors of the Federal Reserve System *and Rules 400 through 406 under the Exchange Act and Rules 41.42 through 41.48 under the CEA* are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the haircut requirements pursuant to SEA Rule 15c3–1 (Net Capital) shall be deducted in computing the Net Capital of the member organization under the Exchange's Capital Requirements. However, when computing Net Capital deductions for transactions in securities covered by paragraphs (e)(2)(F) and (e)(2)(G) of this Rule, the respective requirements of those paragraphs may be used, rather than the haircut requirements of SEA Rule 15c3–1.

Rule 431(e)(6)(B) unchanged.

(e)(7) Nonpurpose Credit—In a nonsecurities credit account, a member organization may extend and maintain nonpurpose credit to or for any customer without collateral or on any collateral whatever, provided:

(A) The account is recorded separately and confined to the transactions and relations specifically authorized by Regulation T of the Board of Governors of the Federal Reserve System;

(B) The account is not used in any way for the purpose of evading or circumventing any regulation of the Exchange or of the Board of Governors of the Federal Reserve System *and Rules 400 through 406 under the Exchange Act and Rules 41.42 through 41.48 under the CEA;* and

(C) The amount of any deficiency between the equity in the account and the margin required by the other provisions of this Rule shall be deducted by computing the Net Capital of the member organization under the Exchange's Capital Requirements.

(The term ''nonpurpose credit'' means an extension of credit other than ''purpose credit,'' as defined in Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System.)

Rule 431(e)(8) through (f)(9) unchanged.

(f) (10) *Customer Margin Rules Relating to Security Futures.*

(A) *Applicability. No member or member organization may effect a transaction involving, or carry an account containing, a security futures contract with or for a customer in a margin account, without obtaining proper and adequate margin as set forth in this section.*

(B) Amount of customer margin.

(i) *General Rule. As set forth in sections (b) and (c) of this Rule, the minimum initial and maintenance margin levels for each security futures contract, long and short, shall be twenty (20) percent of the current market value of such contract.*

(ii) *Excluded from the rules' requirements are arrangements between a member or member organization and a customer with respect to the customer's financing of proprietary positions in security futures, based on the member's or member organization's good faith determination that the customer is an ''Exempted Person'', as defined in Rule 401(a)(9) under the Exchange Act, and Rule 41.43(a)(9) of the CEA, except for the proprietary account of a broker-dealer carried by a member organization pursuant to Section (e)(6)(A) of this Rule. Once a registered broker or dealer, or member of a national securities exchange ceases to qualify as an exempted person, it shall notify the member or member organization of this fact before establishing any new security futures positions. Any new security futures positions will be subject to the provisions of this part.*

(iii) *Permissible Offsets.—Notwithstanding the minimum margin levels specified in paragraph (f)(10)(B)(i) of this Rule, customers with offset positions involving security futures and related positions may have initial or maintenance margin levels (pursuant to the offset table below) that are lower than the levels specified in paragraph (f)(10)(B)(i) of this Rule.*

	Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
1	Long security future (or basket of security futures representing each component of a narrow-based securities index) *and* long put option on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus pay for the long put in full.	The lower of: (1) 10% of the aggregate exercise price of the put plus the aggregate put out-of-the-money amount, if any; or (2) 20% of the current market value of the long security future.
2	Short security future (or basket of security futures representing each component of a narrow-based securities index) *and* short put option on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied.	20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any.
3	Long security future *and* Short position in the same security (or securities basket) underlying the security future.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the short stock or stocks.	5% of the current market value as defined in Regulation T of the stock or stocks underlying the security future.
4	Long security future (or basket of security futures representing each component of a narrow-based securities index) *and* short call option on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any.

	Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
5	Long a basket of narrow-based security futures that together tracks a broad based index *and* short a broad-based security index call option contract on the same index.	Narrow-based security index.	20% of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied.	20% of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any.
6	Short a basket of narrow-based security futures that together tracks a broad-based security index *and* short a broad-based security index put option contract on the same index.	Narrow-based security index.	20% of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied.	20% of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any.
7	Long a basket of narrow-based security futures that together tracks a broad-based security index *and* long a broad-based security index put option contract on the same index.	Narrow-based security index.	20% of the current market value of the long basket of narrow-based security futures, plus pay for the long put in full.	The lower of: (1) 10% of the aggregate exercise price of the put, plus the aggregate put out-of-the-money amount, if any; or (2) 20% of the current market value of the long basket of security futures.
8	Short a basket of narrow-based security futures that together tracks a broad-based security index *and* long a broad-based security index call option contract on the same index.	Narrow-based security index.	20% of the current market value of the short basket of narrow-based security futures, plus pay for the long call in full.	The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20% of the current market value of the short basket of security futures.
9	Long security future *and* short security future on the same underlying security (or index).	Individual stock or narrow-based security index.	The greater of: (1) 5% of the current market value of the long security future; or (2) 5% of the current market value of the short security future.	The greater of: 5% of the current market value of the long security future; or (2) 5% of the current market value of the short security future.
10	Long security future, long put option *and* short call option. The long security future, long put and short call must be on the same underlying security and the put and call must have the same exercise price. (Conversion).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from the call sale may be applied.	10% of the aggregate exercise price, plus the aggregate call in-the-money amount, if any.
11	Long security future, long put option *and* short call option. The long security future, long put and short call must be on the same underlying security and the put exercise price must be below the call exercise price. (Collar).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from call sale may be applied.	The lower of: (1) 10% of the aggregate exercise price of the put plus the aggregate put out-of-the-money amount, if any; or (2) 20% of the aggregate exercise price of the call, plus the aggregate call in-the-money amount, if any.
12	Short security future *and* long position in the same security (or securities basket) underlying the security future.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the long security or securities.	5% of the current market value, as defined in Regulation T, of the long stock or stocks.
13	Short security future *and* long position in a security immediately convertible into the same security underlying the security future, without restriction, including the payment of money.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the long security or securities.	10% of the current market value, as defined in Regulation T, of the long stock or stocks.
14	Short security future (*or* basket of security futures representing each component of a narrow-based securities index) *and* Long call option or warrant on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the short security future, plus pay for the call in full.	The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20% of the current market value of the short security future.
15	Short security future, short put option and long call option. The short security future, short put and long call must be on the same underlying security and the put and call must have the same exercise price. (Reverse Conversion).	Individual stock or narrow-based security index.	20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any, plus pay for the call in full. Proceeds from put sale may be applied.	10% of the aggregate exercise price, plus the aggregate put in-the-money amount, if any.
16	Long (short) a security future *and* short (long) an identical[6] security future traded on a different market.	Individual stock and narrow-based security index.	The greater of: (1) 3% of the current market value of the long security future(s); or (2) 3% of the current market value of the short security future(s).	The greater of: (1) 3% of the current market value of the long security future(s); or (2) 3% of the current market value of the short security future(s).

	Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
17	Long (short) a basket of security futures that together tracks a narrow-based index and short (long) a narrow based index future.	Individual stock and narrow-based security index.	The greater of: (1) 5% of the current market value of the long security future(s); or (2) 5% of the current market value of the short security future(s).	The greater of: (1) 5% of the current market value of the long security future(s); or (2) 5% of the current market value of the short security future(s).

(C) *Definitions. For the purposes of section (f)(10) of this Rule and the offset table noted above, with respect to the term ''security futures contracts,'' the following terms shall have the meanings specified below:*

(i) *The term ''security futures contract'' means a ''security future'' as defined in Section 3(a)(55) of the Exchange Act.*

(ii) *The term ''current market value'' has the same meaning as it is as defined in Rule 401(4) under the Exchange Act and Rule 41.43(a)(4) of the CEA.*

(iii) *The term ''underlying security'' means, in the case of physically settled security futures contracts, the security that is delivered upon expiration of the contract, and, in the case of cash settled security futures contracts, the security or securities index the price or level of which determines the final settlement price for the security futures contract upon its expiration.*

(iv) *The term ''underlying basket'' means, in the case of a securities index, a group of security futures contracts where the underlying securities as defined in paragraph (iii) above include each of the component securities of the applicable index and which meets the following conditions: (1) The quantity of each underlying security is proportional to its representation in the index, (2) the total market value of the underlying securities is equal to the aggregate value of the applicable index, (3) the basket cannot be used to offset more than the number of contracts or warrants represented by its total market value, and (4) the security futures contracts shall be unavailable to support any other contract or warrant transaction in the account.*

(v) *The term ''underlying stock basket'' means a group of securities which includes each of the component securities of the applicable index and which meets the following conditions: (1) The quantity of each stock in the basket is proportional to its representation in the index, (2) the total market value of the basket is equal to the underlying index value of the index options or warrants to be covered (3) the securities in the basket cannot be used to cover more than the number of index options or warrants represented by that value, and (4) the securities in the basket shall be unavailable to support any other option or warrant transaction in the account.*

(vi) *The term ''variation settlement'' has the same meaning as it is defined in Rule 401(a) of the Exchange Act and Rule 41.43(a)(32) of the CEA.*

(D) Security Futures Dealers' Accounts. Notwithstanding the other provisions of this section (f)(10), a member organization may carry and clear the market maker permitted offset positions (as defined below) of one or more security future dealers in an account which is limited to bonafide market maker transactions, upon a ''Good Faith'' margin basis which is satisfactory to the concerned parties, provided the ''Good Faith'' margin requirement is not less than the Net Capital haircut deduction of the member organization carrying the transaction pursuant to Rule 325. In lieu of collecting the ''Good Faith'' margin requirement, a carrying member organization may elect to deduct in computing its Net Capital the amount of any deficiency between the equity maintained in the account and the ''Good Faith'' margin required.

For the purpose of this paragraph (f)(10)(D), the term ''security futures dealer'' means a security futures dealer as defined in Rule 400 (c)(2)(v) of the Exchange Act and Rule 41.42(c)(2)(v) of the CEA.

For purposes of this paragraph (f)(10)(D), a permitted offset position means in the case of a security futures contract in which a security futures dealer makes a market, a position in the underlying asset or other related assets, or positions in options overlying the asset or other related assets. Accordingly, a security futures dealer may establish a long or short position in the assets underlying the security futures contracts in which the security futures dealer makes a market, and may purchase or write options overlying those assets, if the account holds the following permitted offset positions:

(i) A long position in the security futures contract or underlying asset offset by a short option position which is ''in or at the money'';

(ii) A short position in the security futures contract or underlying asset offset by a long option position which is ''in or at the money'';

(ii) A position in the underlying asset resulting from the assignment of a market-maker short option position or making delivery in respect of a short security futures contract;

(iv) A position in the underlying asset resulting from the assignment of a market-maker long option position or taking delivery in respect of a long security futures contract;

(v) A net long position in a security futures contract in which a security futures dealer makes a market or the underlying asset;

(vi) A net short position in a security future contract in which a security futures dealer makes a market or the underlying asset; or

(vii) An offset position as defined in SEC Rule 15c3–1, including its appendices, or any applicable SEC staff interpretation or no-action position.

(E) Approved Options Specialists' or Market Makers' Accounts. Notwithstanding the other provisions of (f)(10) and (f)(2)(j), a member organization may carry and clear the market maker permitted offset positions (as defined below) of one or more approved options specialists or market makers in an account which is limited to bonafide approved options specialist or market maker transactions, upon a ''Good Faith'' margin basis which is satisfactory to the concerned parties, provided the ''Good Faith'' margin requirement is not less than the Net Capital haircut deduction of the member organization carrying the transaction pursuant to Rule 325. In lieu of collecting the ''Good Faith'' margin requirement, a carrying member organization may elect to deduct in computing its Net Capital the amount of any deficiency between the equity maintained in the account and the ''Good Faith'' margin required. For the purpose of this paragraph (f)(10)(E), the term ''approved options specialist or market maker'' means a specialist, market maker, or registered trader in

[6] Two security futures contracts will be considered ''identical'' for this purpose if they are issued by the same clearing agency or cleared and contracts guaranteed by the same derivatives clearing organization, have identical specifications, and would offset each other at the clearing level.

options as referenced in paragraph (f)(2)(j) of this Rule, who is deemed a specialist for all purposes under the Exchange Act and who is registered pursuant to the rules of a national securities exchange.

For purposes of this paragraph (f)(10)(E), a permitted offset position means a position in the underlying asset or other related assets. Accordingly, a specialist or market maker may establish a long or short position in the assets underlying the options in which the specialist or market maker makes a market, or a security futures contract thereon, if the account holds the following permitted offset positions:

(i) *A long position in the underlying instrument or security futures contract offset by a short option position which is ''in or at the money'';*

(ii) *A short position in the underlying instrument or security futures contracts offset by a long option position which is ''in or at the money'';*

(iii) *A stock position resulting from the assignment of a market maker short option position or delivery in respect of a short security futures contract;*

(iv) *A stock position resulting from the exercise of a market maker long option position or taking delivery in respect of a long security futures contract;*

(v) *A net long position in a security (other than an option) in which a market maker makes a market;*

(vi) *A net short position in a security (other than an option) in which the market maker makes a market; or*

(vii) *An offset position as defined in SEC Rule 15c3–1, including the appendices, or any applicable SEC staff interpretation or no-action position.*

For purposes of paragraphs (f)(10)(D) and (E), the term ''in or at the money'' means the current market price of the underlying security is not more than the two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; the term ''in the money'' means the current market price of the underlying asset or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; and the term ''overlying option'' means a put option purchased or a call option written against a long position in an underlying asset; or a call option purchased or a put option written against a short position in an underlying asset.

Securities, including options and security futures contracts, in such accounts shall be valued conservatively in the light of current market prices and the amount which might be realized upon liquidation. Substantial additional margin must be required or excess Net Capital maintained in all cases where the securities carried: (i) Are subject to unusually rapid or violent changes in value including volatility in the expiration months of options or security futures products, (ii) do not have an active market, or (iii) in one or more or all accounts, including proprietary accounts combined, are such that they cannot be liquidated promptly or represent undue concentration of risk in view of the carrying member or member organization's Net Capital and its overall exposure to material loss.

(F) Approved Specialists' Accounts—others. Notwithstanding the other provisions of (f)(10) and (f)(2)(j), a member organization may carry the account of an ''approved specialist,'' which account is limited to bonafide specialist transactions including hedge transactions with security futures contracts upon a margin basis which is satisfactory to both parties. The amount of any deficiency between the equity in the account and haircut requirements pursuant to SEA Rule 15c3–1 (Net Capital) shall be deducted in computing the Net Capital of the member organization under the Exchange's Capital Requirements.

For purposes of this paragraph F (10)(F) the term ''approved specialist'' means a specialist who is deemed a specialist for all purposes under the Exchange Act and who is registered pursuant to the rules of a national securities exchange.

.70 Money market mutual funds, as defined under Rule 2a-7 of the Investment Company Act of 1940, can be used for satisfying margin requirements under this subsection (f)(10), provided that the requirements of Rule 404(b) of the Exchange Act and Rule 46(b)(2) under the CEA are satisfied.

.80 Day-trading of security futures is subject to the minimum requirements of this Rule. If deemed a pattern day-trader, the customer must maintain equity of $25,000. The 20% requirement, for security futures contracts, should be calculated based on the greater of the initial or closing transaction and any amount exceeding NYSE excess must be collected. The creation of a customer call subjects the account to all the restrictions contained in Rule 431(f)(8)(B).

.90 The use of the ''time and tick'' method is based on the member's or member organization's ability to substantiate the validity of the system used. Lacking this ability dictates the use of the aggregate method.

.100 Security futures contracts transacted or held in a futures account shall not be subject to any provision of this Rule.

* * * * *

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 III below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The CFTC and SEC have adopted customer margin requirements for the trading of futures on narrow-based indices and single stocks (collectively referred to as ''security futures contracts'' or ''SFCs'') (''SEC/CFTC Margin Regulations'')[7] pursuant to authority delegated to them by the Federal Reserve Board (''FRB'') under Section 7(c)(2)(B) of Act.[8] As noted in the adopting release,[9] Section 7(c)(2) of the Act provides that the customer margin requirements for SFCs must satisfy four requirements: (1) They must preserve the financial integrity of markets trading security futures contracts; (2) they must prevent systemic risk; (3) they must (a) be consistent with the margin requirements for comparable options traded on an exchange registered pursuant to Section 6(a) of the Act,[10] and (b) provide for initial and maintenance margin that are not lower than the lowest level of margin, exclusive of premium, required for comparable exchange traded options; and (4) they must be and remain consistent with the margin requirements established by the FRB under Regulation T.[11] The regulations on customer margin for security futures became effective on September 13, 2002. The Exchange believes that the proposed amendments discussed below

[7] 17 CFR 240.400 through 406; 17 CFR 41.41 through 41.48.

[8] 15 U.S.C. 78g(c)(2)(B).

[9] *See* Securities Exchange Act Release No. 46292 (August 1, 2002), 67 FR 53146 (August 14, 2002).

[10] 15 U.S.C. 78f.

[11] 12 CFR 220.

conform NYSE margin rules to these new requirements.

Proposed Amendments

NYSE Rule 431 prescribes specific margin requirements for members and member organizations of the Exchange, which must be maintained in all accounts of their customers, based on the type of securities products held in such accounts.

The Exchange proposes to amend NYSE Rule 431(b) and (c) to provide that the amount of initial and maintenance margin required for long and short SFCs held in a securities account must be 20% of the current market value of such SFC. The Exchange believes that this amendment would essentially make margin requirements for SFCs consistent with the margin requirements for comparable exchange-traded options contracts, which are premium plus 20% of the underlying securities.

In addition, the Exchange proposes to amend NYSE Rule 431(e)(6)(A) (''Broker/Dealer Accounts'') to permit introducing broker-dealers trading SFCs to deduct from their proprietary accounts any deficiency between the equity in the account and the haircut requirements pursuant to Rule 15c3–1 of the Exchange Act (''Net Capital Rule'')[12] in computing the net capital of the member or member organization, in lieu of collecting margin.

The Exchange is proposing a new provision, NYSE Rule 431(f)(10) (''Customer Margin Rules Relating to Security Futures'') to provide that SFCs transacted in a securities account will be subject to all other provisions of NYSE Rule 431, including NYSE Rule 431(f)(8)(B)(''Day Trading''). Excluded from the Exchange's margin requirements are arrangements between a member or member organization and a borrower, whereby the borrower is defined as an ''Exempted Person,'' under Rule 401(a)(9) of the Act,[13] and Rule 41.43(a)(9)[14] of the Commodity Exchange Act. Further, SFCs transacted in a futures account would not be subject to NYSE Rule 431.

NYSE Rule 431(f)(10)(B)(4) (''Permissible Offsets'') is also a new provision that permits margin requirements to be lower than the 20% general requirement, and recognizes the hedged nature of certain offsetting positions involving SFCs and related positions. Margin levels for offsetting positions involving SFCs and related positions would thus be lower than would be required if those positions were margined separately. Further, the Exchange believes that the proposed amendment makes the Exchange's rule consistent with the table of offsets included in the recently adopted SEC/CFTC margin regulations noted above.

Proposed NYSE Rule 431(f)(10)(C) is a new provision that would provide certain definitions applicable specifically to SFCs, including, among other things, the definitions of ''security futures contract,'' ''current market value,'' and ''underlying security.''

Proposed NYSE Rule 431(f)(10)(D) (''Security Futures Dealers'' Accounts''), NYSE Rule 431(f)(10)(E) (''Approved Options Specialists'' or Market Makers' Accounts'') and NYSE Rule 431(f)(10)(F) (''Approved Specialists'' Accounts-others'') are new rule provisions. As proposed, the new provisions would permit ''good faith'' margin treatment for specified hedged offset positions carried in the accounts noted above. However, unlike the amendments proposed by other SROs on SFCs, [15] the Exchange believes that its proposal will permit member organizations to accord offset treatment in accounts carried for such specialists, market makers and security futures dealers only when their activity is limited to bona fide specialist or market making transactions. According to the Exchange, the limitations imposed are consistent with its belief that market makers bear the primary responsibility and obligation to maintain fair and orderly markets, and provide liquidity to the marketplace. Were a revenue or other test substituted for the affirmative obligation standard proposed, the Exchange believes that entities other than qualified market makers would be permitted to act as market makers. The Exchange believes that this was not the intent of the Commission or CFTC when adopting margin regulations for security futures.

Proposed .70 of NYSE Rule 431(f)(10) is a new provision that will permit money market mutual funds as defined in Rule 2a–7 under the ICA to be used for satisfying margin requirements for security futures contracts, provided that the requirements of Rule 404(b) under the Act,[16] and Rule 41.46(b)(2) under the CEA [17] are satisfied. Presently, money market mutual funds may be used as collateral to satisfy margin requirements under Regulation T in a securities margin account. The proposed amendments to NYSE Rule 431 permit the use of such funds as collateral for SFCs as is required by the new SEC/CFTC Margin Regulations described above.

Except as otherwise intended, the Exchange believes that these proposed amendments are consistent with other SRO rule amendments recently filed with the SEC for approval.

2. Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Act,[18] which requires, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and national market system, and in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change 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

[12] 17 CFR 240.15c3–1.

[13] 17 CFR 240.401(a)(9).

[14] 17 CFR 41.43(a)(9).

[15] *See e.g.*, Securities Exchange Act Release No. 46555 (September 26, 2002), 67 FR 61707 (October 1, 2002) (SR–OC–2002–01).

[16] 17 CFR 240.404(b).

[17] 17 CFR 41.46(b)(2).

[18] 15 U.S.C. 78f(b)(5).

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NYSE–2002–53 and should be submitted by December 5, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The NYSE has asked the Commission to approve the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice of the filing to accommodate the timetable for the trading of security futures.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,[20] which requires, among other things, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[21] In addition, the Commission believes that the proposed rule change is consistent with section 7(c)(2)(B) of the Act,[22] which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, be consistent with the margin requirements for comparable exchange-traded options, and provides that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, consistent with Rule 403 under the Act, NYSE's proposed rule provides for a minimum margin level of 20% of current market value for all positions in security futures carried in a securities account. The Commission believes that 20% is the minimum margin level necessary to satisfy the requirements of section 7(c)(2)(B) of the Act. Rule 403 under the Act[23] also provides that a national securities exchange may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an exchange's margin levels for offsetting positions meet the criteria set forth in section 7(c)(2)(B) of the Act. The offsets proposed by NYSE are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

The Commission also believes that the treatment proposed by NYSE for security futures dealers under Rule 431 is consistent with the Act, and Rule 400(c)(2)(v) thereunder.[24] Specifically, the rule would permit NYSE member organizations to accord ''good faith'' margin treatment to specified offsetting positions involving security futures, carried in a securities account for a security futures dealer, consistent with the customer margin rules for security futures adopted by the Commission and the CFTC.

Finally, the Commission believes it is consistent with the Act for the NYSE to exclude from its margin requirements positions in SFCs carried in a futures account. The Commission believes that by choosing to exclude such positions from the scope of Rule 431, the NYSE's proposal will make compliance by members with the regulatory requirements of several SROs easier.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposed rule change should enable NYSE members to trade security futures in securities accounts from the outset of security futures trading.[25] In addition, the Commission believes that granting accelerated approval to the proposed rule change and Amendment No. 1 thereto should clarify NYSE members' obligations under NYSE Rule 431 with respect to their trading in security futures. The Commission notes that the NYSE has filed the proposed rule change as a temporary pilot to give members of the public an opportunity to comment on the substance of the proposed rule change before it requests permanent approval.

Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[26] to approve the proposed rule change, as amended, prior to the thirtieth day after publication of the notice of filing on a pilot basis for sixty days beginning on the date of this order.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change, as amended (File No. SR–NYSE–2002–53), be, approved until January 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

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[19] 15 U.S.C. 78s(b)(2).

[20] 15 U.S.C. 78f(b)(5).

[21] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78g(c)(2)(B).

[23] 17 CFR 240.403(b)(2).

[24] 17 CFR 200.400(c)(2)(v).

[25] The Commission understands that trading in security futures is scheduled to begin on November 8, 2002.

[26] 15 U.S.C. 78f(b)(5); 15 U.S.C. 78s(b)(2).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46787; File No. SR–OC–2002–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto, by OneChicago, LLC Relating to Customer Margin Requirements for Security Futures

November 7, 2002.

On August 30, 2002, OneChicago, LLC (''OneChicago'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to customer margin requirements for security futures. On September 25, 2002, OneChicago submitted Amendment No. 1 to the proposed rule change.[3] On September 25, 2002, OneChicago submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change was

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kieran P. Hennigan, Sullivan & Cromwell, to Assistant Director for Security Futures Products, Division of Market Regulation (''Division''), Commission, dated September 24, 2002, (''Amendment No. 1'').

[4] *See* letter from Frank Ochsenfeld, Sullivan & Cromwell, attention to T.R. Lazo, Senior Special

Continued

published for comment in the **Federal Register** on October 1, 2002.[5] The Commission received nine comment letters from ten commenters on the proposed rule change.[6] On November 7, 2002, OneChicago submitted Amendment No. 3 to the proposed rule change.[7] In addition, OneChicago submitted a letter in response to the commenters.[8] This order approves the proposed rule change and Amendment Nos. 1 and 2 thereto, accelerates approval of Amendment No. 3, and solicits comments from interested persons on Amendment No. 3.

I. Description of the Proposed Rule Change

Introduction

On August 1, 2002, the Commodity Futures Trading Commission (''CFTC'') and SEC (collectively, the ''Commissions'') jointly adopted customer margin requirements for security futures.[9] Under the Commissions' ''account specific'' approach, the Commissions' margin rules apply certain core requirements to all security futures, and direct that the more specific requirements depend on the type of account in which the security futures are held (*i.e.*, a futures account or securities account).

Proposal

The proposed rule change sets forth margin requirements for security futures traded on OneChicago that are held in futures accounts.[10] Specifically, the proposed rule change sets the minimum initial and maintenance customer margin rates for such security futures and provides for lower margin levels for permitted strategy-based offset positions. The proposed rules exclude certain financial relations to which the Commissions' margin rules do not apply. The proposed rule change also establishes standards under which members may qualify as Security Futures Dealers and therefore be excluded from OneChicago's margin rules.

Margin Levels

The Commissions' margin rules require that customers deposit in their accounts minimum margin of 20 percent of the current market value of security futures.[11] In addition, the Commissions' rules permit national securities exchanges to set margin levels below 20 percent of the current market value of security futures for certain offsetting positions in security futures and other securities or futures. The proposed rule change establishes a minimum margin rate of 20 percent for both long and short positions in security futures, except with respect to specified, permitted offsetting positions. Under the proposed rule change, OneChicago permits reduced margin levels for eighteen specific offsetting positions.[12]

Security Futures Dealers

As noted above, the proposed rule change provides an exclusion from OneChicago's margin rules for market makers. Under the proposed rule change, OneChicago's market maker exclusion provides that in order to qualify for the exclusion from the margin rules, a person must (1) be a OneChicago member that is registered with the Exchange as a dealer in security futures; (2) be registered as a floor trader or a floor broker with the CFTC under Section 4f(a)(1) of the CEA or as a dealer with the Commission under Section 15(b) of the Act; (3) maintain records sufficient to prove compliance with the requirements of OneChicago Rule 515(n) and Rule 41.42(c)(2)(v) under the CEA and Rule 400(c)(2)(v) under the Act, as applicable, ''including without limitation trading account statements and other financial records sufficient to detail activity;''[13] and (4) hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis. In addition, the market maker exclusion provides that any market maker that fails to comply with the Rules of the Exchange or the margin rules adopted by the Commission and the CFTC shall be subject to disciplinary action in accordance with Chapter 7 of OneChicago's rules, and that appropriate sanctions in the case of any such failure shall include, without limitation, a revocation of such market maker's registration as a dealer in security futures.

As originally submitted, the market maker exclusion further provided that a market maker would be considered to be holding itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis if either (1) at least 75% of its gross revenue on an annual basis is derived from business activities or occupations from trading listed financial derivatives and the instruments underlying those derivatives, including security futures, stock index futures and options, stock and index options, stocks, foreign currency futures and options, foreign currencies, interest rate futures and options, fixed income instruments and commodity futures and options; or (2) except for unusual circumstances, at least fifty percent (50%) of its trading activity on OneChicago in any calendar quarter is in classes of security futures

Counsel, Division, Commission, dated September 24, 2002, (''Amendment No. 2'').

[5] Securities Exchange Act Release No. 46555 (September 26, 2002), 67 FR 61707.

[6] *See* letters to Jonathan Katz, Secretary, Commission, from: Philip D. DeFeo, Chairman and Chief Executive Officer, Pacific Stock Exchange, dated October 15, 2002 (''PCX Letter''); Marc Menchel, Senior Vice President and General Counsel, National Association of Securities Dealers, dated October 23, 2002 (''NASD Letter''); Richard Ketchum, Deputy Vice Chairman and President, The Nasdaq Stock Market, Inc., dated October 23, 2002 (''Nasdaq Letter''); Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc., dated October 22, 2002 (''ISE Letter''); Michael J. Ryan, Jr., Executive Vice President and General Counsel, American Stock Exchange, Inc., dated October 22, 2002 (''Amex Letter''); John P. Davidson, Managing Director, Morgan Stanley & Co. Inc., and Mitchell J. Lieberman, Managing Director, Goldman, Sachs & Co., dated October 23, 2002 (''Morgan/Goldman Letter''); Kathleen M. Hamm, Senior Vice President, Nasdaq Liffe Markets, LLC, dated October 22, 2002 (''NQLX Letter''); Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc., dated October 24, 2002 (''NYSE Letter''); and Michael R. Schaefer, Managing Director, Salomon Smith Barney, dated October 25, 2002 (''SSB Letter'').

[7] *See* letter from Frank Ochsenfeld, Sullivan & Cromwell, attention to T.R. Lazo, Senior Special Counsel, Division, Commission, dated November 7, 2002, (''Amendment No. 3''). In Amendment No. 3, OneChicago modified certain aspects of its exclusion for market making activity.

[8] Letter from C. Robert Paul, General Counsel, OneChicago, to Jonathan G. Katz, Secretary, Commission, dated November 7, 2002 (''OneChicago Letter'').

[9] Securities Exchange Act Release No. 46292, 67 FR 53146 (August 14, 2002).

[10] The proposed rule change limits the scope of OneChicago's customer margin rules to positions in futures accounts, except with respect to the exclusion for market making activity (which is discussed below) where the proposed rule change provides that the rules apply to positions in both futures accounts and securities accounts. However, the Commission notes that OneChicago's market maker exclusion will apply to a member's positions in securities accounts only to the extent recognized by the rules of the member's designated examining authority.

[11] Rule 403(b)(1) under the Act and Rule 41.45(b)(1) under the Commodity Exchange Act (''CEA'') 17 CFR 240.403(b)(1) and 17 CFR 41.45(b)(1).

[12] In its release adopting the customer margin rules for security futures, the Commissions' published a table of eighteen offsetting positions and corresponding margin levels that are consistent with comparable offsets permitted for positions involving exchange-traded options. The proposed rule change includes all of the offsetting positions that the Commissions included in their table. However, OneChicago's customer margin rules will only apply to positions held in futures accounts. Because any offset that includes a security (other than a security future) must be carried in a securities account, OneChicago's rule applies only to those offsetting positions that may be carried in a futures account (*i.e.*, offsets that do not include securities other than security futures).

[13] OneChicago added the quoted language to this requirement of the market maker exclusion in Amendment No. 3.

products to which it is assigned under a market making program adopted by OneChicago pursuant to Rule 514.

In Amendment No. 3, OneChicago amended this aspect of its proposed rule change. As amended, the market maker exclusion now provides three alternative ways for a member to satisfy the requirement that a security futures dealer hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis. Under the first alternative, the market maker must (1) provide continuous two-sided quotations throughout the trading day for all delivery months of security futures representing a meaningful proportion of the total trading volume on the Exchange,[14] subject to relaxation during unusual market conditions as determined by OneChicago (such as a fast market in either a security future an underlying security) at which times the market maker must use its best efforts to quote continuously and competitively; and (2) when providing quotations, quote with a maximum bid/ask spread of no more than the greater of $0.20 or 150% of the bid/ask spread in the primary market for the security underlying each security future.

Under the second alternative, the market maker must (1) respond to at least 75% of the requests for quotation for all delivery months of security futures representing a meaningful proportion of the total trading volume on the Exchange [15], subject to relaxation during unusual market conditions as determined by the OneChicago (such as a fast market in either a security future or an underlying security) at which times such Market Maker must use its best efforts to quote competitively; and (2) when responding to requests for quotation, quote within five seconds with a maximum bid/ask spread of no more than the greater of $0.20 or 150% of the bid/ask spread in the primary market for the security underlying each security future.

Under the third alternative, the market maker is assigned to a group of security futures that is either unlimited in nature (''Unlimited Assignment'') or is assigned to no more than 20% of the security futures listed on the Exchange (''Limited Assignment''). In addition, this alternative provides that: (a) At least 75% of the market maker's total trading activity in OneChicago products is in its assigned security futures, measured on a quarterly basis; (b) during at least 50% of the trading day the market maker has bids or offers in the market that are at or near the best market, except in unusual market conditions (such as a fast market in either a security future or an underlying security), with respect to at least 25% (in the case of an Unlimited Assignment) or at least one (in the case of a Limited Assignment) of its assigned security futures; and (c) the first two requirements are satisfied on at least 90% (in the case of an Unlimited Assignment) or 80% (in the case of a Limited Assignment) of the trading days in each calendar quarter.

II. Summary of Comments

As noted above, the Commission received nine comment letters from ten commenters on the proposed rule change,[16] and OneChicago submitted a letter in response to the comments.[17]

Market Maker Exclusion

All of the comments expressed concern with OneChicago's proposed market maker exclusion. In particular, the commenters objected to the provision that would allow OneChicago members to qualify for the market maker exclusion based on the amount of revenue they derive from trading listed financial derivatives and underlying instruments. Six comments expressed the view that this test was inconsistent with the guidelines provided by the Commission and the CFTC,[18] and six comments maintained that the proposed revenue requirement was not consistent with the margin requirements for comparable exchange-traded options and therefore did not satisfy the requirements of section 7(c)(2) of the Act.[19] Commenters argued that the revenue test would allow OneChicago members to qualify for the market maker exclusion without actually providing liquidity to the market for security futures.[20] Other commenters contended that the revenue test would increase systemic risk in the marketplace for security futures, and therefore did not satisfy section 7(c)(2) of the Act, by allowing an excessively high number of market professionals to trade security futures with reduced margin requirements.[21]

Three comments also expressed concern with the provision that would allow a OneChicago member to qualify for the market maker exclusion if at least 50% of its trading activity per quarter was in contracts to which it is assigned pursuant to a market making program adopted by OneChicago.[22] Those comments generally expressed the belief that the requirement was too vague and asked the Commission not to approve it until OneChicago had explained the nature of its market making program more fully.

In response to the commenters' concerns, OneChicago modified the tests that a member must satisfy to qualify for the market maker exclusion by eliminating the test based on revenue and revising the test based on trading activity. OneChicago stated that it believes that its revised test is consistent with the rules of the options exchanges. In addition, OneChicago noted that it requested approval of the revised tests on a six-month pilot basis and stated that it intends to use this pilot program to monitor carefully the operation and affect of the revised tests. OneChicago, in response to commenters' concerns. The Commission believes that Amendment No. 3 addresses the commenters' concerns by modifying the requirements of the market maker exclusion, particularly by eliminating the revenue test, and notes that any changes or additions to OneChicago's current market making program would be filed with the Commission for approval under section 19(b)(2) of the Act.

In addition, two comments expressed the view that OneChicago's proposed market maker exclusion would encourage imprudent risk taking, speculation, and leverage because there would be no net capital requirements imposed either on a floor broker that qualifies for the market maker exclusion or on its carrying broker-dealer or FCM.[23] The commenters' concern is that the regulatory capital requirements for certain security futures market participants is inadequate. Moreover, those commenters expressed concern that in the event of a bankruptcy of a carrying firm, a bankruptcy receiver or

[14] Beginning on the 181st calendar day after the commencement of trading on the Exchange, a ''meaningful proportion of the total trading volume on the Exchange from time to time'' shall mean a minimum of 20% of such trading volume.

[15] Beginning on the 181st calendar day after the commencement of trading on the Exchange, a ''meaningful proportion of the total trading volume on the Exchange from time to time'' shall mean a minimum of 20% of such trading volume.

[16] PCX Letter, NASD Letter, Nasdaq Letter, ISE Letter, Amex Letter, Morgan/Goldman Letter, NQLX Letter, NYSE Letter, and SSB Letter. *See supra* note 6. The SSB Letter stated that it agreed generally with the comments expressed in the Morgan/Goldman Letter.

[17] OneChicago Letter, *supra* note 8.

[18] NASD Letter, Morgan/Goldman Letter, NQLX Letter, NYSE Letter, Nasdaq Letter, SSB Letter, and Amex Letter.

[19] PCX Letter, NASD Letter, ISE Letter, Amex Letter, Morgan/Goldman Letter, and SSB Letter.

[20] PCX Letter, ISE Letter, and NQLX Letter, Morgan/Goldman Letter.

[21] Morgan/Goldman Letter, NASD Letter, SSB Letter.

[22] PCX Letter, Amex Letter, and NQLX Letter.

[23] Morgan/Goldman Letter and SSB Letter.

trustee would pay out to the floor broker a pro rata share of the available pool of assets on the same terms as customers, notwithstanding that the floor broker was not required to post customer margin.

In response, OneChicago stated that Rule 1.17 under the CEA and the minimum financial requirements of the futures exchanges all require that a futures commission merchant maintain adjusted net capital of at least four percent of customer segregated funds (an amount which includes required margin deposits as well as open trade equity) and to deduct from net capital the amount of undermargined and deficit customer and non-customer accounts. In addition, OneChicago stated that a market maker is entitled to nothing more than its pro rata share of customer property in a bankruptcy proceeding, and that if a market maker had reduced margin requirements its share of the customer estate would be correspondingly reduced.

The Commission believes that the determination of what amount of capital is sufficient for a market participant is within the purview of the participant's primary regulator and does not believe that it would be appropriate to require OneChicago's margin rules to address these concerns indirectly. In addition, the Commission believes that any concerns regarding a market maker's share of a customer's estate in a bankruptcy proceeding would be more properly addressed by changes to the insolvency regime applicable to those market participants.

Finally, three commenters expressed concern with the fact that certain aspects of OneChicago's margin rules would apply to positions carried in securities accounts. One commenter objected to OneChicago's proposal to adopt margin levels for offsetting positions that may only be held in securities accounts even though its rules apply only to positions in futures accounts because the proposal gave the impression that those offsets were permitted to be carried in a futures account.[24] Two commenters also objected to the provisions in OneChicago's rules asserting that, with respect to the exclusion for market makers, OneChicago's margin rules would apply to positions in both futures accounts and securities accounts.[25] These comments argued that this aspect of the proposed rule change would conflict with current margin requirements governing securities accounts of broker-dealers and would create confusion by subjecting those market makers to the margin requirements of both OneChicago and their designated examining authority.

In response to these comments, OneChicago stated that it prefers to retain the full range of permitted margin offsets, so that they can be made effective if OneChicago later amends its margin rules to apply them to securities accounts or if the Commission at some future date takes steps that would permit these margin offsets to be carried in a futures account. In addition, OneChicago stated its view that it should be free to adopt its own rule and to apply that rule to its own members. However, OneChicago also clarified that it was not suggesting that OneChicago's margin rule supersedes that of any other self-regulatory organization. Rather, OneChicago explained that there may be broker-dealers that do not do a customer business that are members only of OneChicago and that these broker-dealers should be able to claim the advantages of market maker margin treatment without regard to whether they carry their positions in a securities or a futures account.

The Commission reiterates that because any offset that includes a security (other than a security future) must be carried in a securities account, OneChicago's rule applies only to those offsetting positions that may be carried in a futures account (*i.e.*, offsets that do not include securities other than security futures). In addition, the Commission emphasizes that approval of the proposed rule change does not affect the applicability of the rules of another self-regulatory organization to its members. As a result, OneChicago's market maker exclusion will apply to a member's positions in securities accounts only to the extent recognized by the rules of the member's designated examining authority.

III. Discussion

Under section 19(b)(2) of the Act, the Commission is directed to approve the proposed rule change if it finds that it is consistent with the requirements of the Act and the rules and the rules and regulations thereunder applicable to a national securities exchange.[26] Section 6(b)(5) of the Act[27] requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[28] In addition, section 7(c)(2)(B) of the Act[29] provides, among other things, that the margin rules for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, and be consistent with the margin requirements for comparable exchange-traded options. Section 7(c)(2)(B) also provides that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option. For the reasons discussed below, after careful review and consideration of the commenters' views, the Commission finds that the rule change is consistent with OneChicago's obligations under the Act and the rules and regulations thereunder.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, consistent with Rule 403 under the Act, OneChicago's proposed rule provides for a minimum margin level of 20% of current market value for all positions in security futures. The Commission believes that 20% is the minimum margin level necessary to satisfy the requirements of section 7(c)(2)(B) of the Act. Rule 403 under the Act[30] also provides that a national securities exchange may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an exchange's margin levels for offsetting positions meet the criteria set forth in section 7(c)(2)(B) of the Act. The offsets proposed by OneChicago are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

Finally, the Commission believes that the standards for OneChicago's market maker exclusion, as amended by Amendment No. 3, are consistent with the Act, and Rule 400(c)(2)(v) thereunder.[31] Specifically, the Commissions' margin rules do not apply to a member of a national securities exchange that is registered with such exchange as a ''security futures dealer'' pursuant to exchange rules that must meet several criteria, including a requirement that a security futures dealer be required ''to hold itself out as

[24] NQLX Letter.

[25] NASD Letter, Nasdaq Letter.

[26] 15 U.S.C. 78s(b)(2).

[27] 15 U.S.C. 78f(b)(5).

[28] In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78*o*–3(b)(9).

[29] 15 U.S.C. 78g(c)(2)(B).

[30] 17 CFR 240.403(b)(2).

[31] 17 CFR 200.400(c)(2)(v).

being willing to buy and sell security futures for its own account on a regular or continuous basis.'' The Commission believes that the affirmative obligations required by OneChicago Rule 515(n) satisfy this requirement.

IV. Accelerated Approval of Amendment No. 3

OneChicago has asked the Commission to approve Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing to accommodate the timetable for the trading of security futures. Amendment No. 3 modifies two aspects of OneChicago's market maker exclusion. First, Amendment No. 3 clarifies the recordkeeping requirements that market makers must meet in order to qualify for the exclusion. The amendments to the recordkeeping requirement of the market maker exclusion clarify the types of records that, consistent with Rule 400(c)(2)(v)(2) under the Act, a market maker must keep in order to qualify for the exclusion for security futures dealers from OneChicago's margin requirements.

Second, Amendment No. 3 modifies the trading obligations that market maker must meet to qualify for the exclusion. The amendments to the trading obligations are in response to the commenters' concerns, and clarify the minimum trading requirements imposed on market makers in order to satisfy the requirement of the exclusion that a market maker hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis. OneChicago has also requested that the Commission approve the amendments to the trading obligations as a pilot program for six months beginning on the date of this order.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposed rule change should enable OneChicago to begin trading security futures from the outset of security futures trading.[32] In addition, the Commission believes that granting accelerated approval to Amendment No. 3 thereto should clarify obligations the obligations that OneChicago members must meet in order to qualify for the market maker exclusion from the margin requirements. In addition, the Commission notes that the modifications to the trading obligations of the market maker exclusion set forth in Amendment No. 3 will take effect as a temporary pilot to give members of the public an opportunity to comment on the substance of that aspect of Amendment No. 3 before OneChicago requests permanent approval. Accordingly, the Commission believes that there is good cause, consistent with Section 19(b) of the Act, to approve Amendment No. 3 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 3 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–OC–2002–01 and should be submitted by December 5 2002.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[33], that the proposed rule change, as amended, (File No. SR–OC–2002–01) be, and hereby is, approved, *provided, however,* that OneChicago Rule 515(n)(ii)(C) is approved until May 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28896 Filed 11–13–02; 8:45 am]

BILLING CODE 8010–01–P

[32] The Commission understands that trading in security futures is scheduled to begin on November 8, 2002.

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3459]

State of Texas

As a result of the President's major disaster declaration on November 5, 2002, I find that Nueces County in the State of Texas constitutes a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on October 24, 2002, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 6, 2003 and for economic injury until the close of business on August 5, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Jim Wells, Kleberg and San Patricio in the State of Texas.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.648
Businesses and non-profit organizations without credit available elsewhere	3.324
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.324

The number assigned to this disaster for physical damage is 345911. For economic injury the number is 9S4800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 6, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–28877 Filed 11–13–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Senior Executive Service; Performance Review Board Members

AGENCY: Small Business Administration.

ACTION: Notice of members of the FY 2002 Performance Review Board.

SUMMARY: Section 4314(c)(4) of Title 5, U.S.C. requires each agency to publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Boards (PRB). The following have been designated to serve on the FY 2002 Performance Review Boards for the U.S. Small Business Administration:

1. John Whitmore, Chief of Staff;
2. Michael Barrera, National Ombudsman;
3. Richard Spence, Assistant Administrator for Congressional and Legislative Affairs;
4. Alfredo Armendariz, Associate Deputy Administrator for Government Contracting and Business Development;
5. Kaaren Street, Associate Deputy Administrator for Entrepreneurial Development;
6. Monika Edwards Harrison, Assistant Administrator for Human Resources;
7. Jams Rivera, Associate Administrator for Financial Assistance;
8. Francisco Marrero, District Director, South Florida;
9. Alberto Alvarado, District Director, Los Angeles;
10. Linda Williams, Associate Administrator for Government Contracting;
11. Eric Benderson, Associate General Counsel for Litigation.

Dated: November 6, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–28858 Filed 11–13–02; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Diplomatic Security, Office of Foreign Missions, Diplomatic Motor Vehicles

[Public Notice 4178]

Notice of Information Collection Under Emergency Review: Forms DS–2003, DS–2004, DS–2005, DS–2006, DS–2007, DS–2008, U.S. Department of State's Notifications of Appointment, Change or Termination of Diplomatic, Consular or Foreign Government Employees; OMB Collection Numbers: 1405–0060; 1405–0061; 1405–0062; 1405–0064; 1405–0089; and 1405–0090

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.

Originating Office: DS/OFM.

Title of Information Collection: Notification of Appointment of Foreign Diplomatic and Career Consular Officer.

Frequency: As often as necessary to add a new person to a foreign mission roster.

Form Number: DS–2003.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 2,000.

Average Hours Per Response: 25 minutes.

Total Estimated Burden: 850.

Title of Information Collection: Notification of Appointment of Foreign Government Employee.

Frequency: As often as necessary to add a new person to a foreign mission roster.

Form Number: DS–2004.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 25 minutes.

Total Estimated Burden: 2,125.

Title of Information Collection: Notification of Appointment of Honorary Consular Officer.

Frequency: As often as necessary to add a new person to a foreign mission roster.

Form Number: DS–2005.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 200.

Average Hours Per Response: 20 minutes.

Total Estimated Burden: 80.

Title of Information Collection: Notification of Change, Identification Card Request.

Frequency: As often as necessary to add a new person to a foreign mission roster.

Form Number: DS–2006.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 9 minutes.

Total Estimated Burden: 600.

Title of Information Collection: Notification of Dependents of Diplomatic, Consular and Foreign Government Employees.

Frequency: As often as necessary to add a new person to a principal record.

Form Number: DS–2007.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 7,000.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 840.

Title of Information Collection: Notification of Termination of Diplomatic, Consular or Foreign Government Employment.

Frequency: As often as necessary to terminate foreign mission members.

Form Number: DS–2008.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 6,000.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 720.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by November 15, 2002. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 720.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by November 15, 2002. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on (202) 395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register.** The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Jacqueline D. Robinson, U.S. Department of State, Office of Foreign Missions, Washington, DC 20520–3302, who may be reached on (202) 895–3532. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on (202) 395–3897.

Dated: July 19, 2002.

Jacqueline D. Robinson,

Director, Accreditations & Diplomatic Motor Vehicles, Office of Foreign Missions, Department of State.

[FR Doc. 02–27353 Filed 11–13–02; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 4157]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on November 26, 2002, in Room 2415 at U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC, 20593–0001. The purpose of this meeting will be to finalize preparations for the 76th Session of the Maritime Safety Committee (MSC 76) and associated bodies of the International Maritime Organization (IMO) scheduled for December 2–13, 2002 at IMO Headquarters in London. The meeting will also finalize preparations for the International Conference on Maritime Security, to be held in conjunction with the second week of MSC 76, December 9–13, 2002.

At this meeting, papers received from IMO and draft U.S. positions for MSC 76 will be discussed. Agenda items include, among other things:

— Large passenger ship safety
— Bulk carrier safety
— Measures to enhance maritime security
— Implementation of the revised STCW Convention
— Piracy and armed robbery against ships
— Reports of six subcommittees—Stability, Load Lines and Fishing Vessel Safety (SLF), Safety of Navigation (NAV), Flag State Implementation (FSI), Bulk Liquids and Gases (BLG), Ship Design and Equipment (DE) and Dangerous Goods, Solid Cargoes and Containers (DSC).

The Conference on Maritime Security will begin after completion of MSC 76 and will include:

— Consideration and adoption of amendments to SOLAS for maritime security.
— Consideration and adoption of an International Ship and Port Facility Security (ISPS) Code; and
— Consideration and adoption of resolutions and recommendations related to maritime security.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G–MS), U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: November 5, 2002.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–28927 Filed 11–13–02; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4156]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9 a.m. on Friday, December 13, 2002, in Room 6319, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. The meeting will discuss the upcoming 46th Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held September 8–12, 2003, at the IMO Headquarters in London, England.

Items of discussion will include:

a. Harmonization of damage stability provisions in SOLAS Chapter II–1,

b. Large Passenger Ship Safety,

c. Review of the Intact Stability Code,

d. Revision of the Fishing Vessel Safety Code and Voluntary Guidelines,

e. Review of the Offshore Supply Vessel Guidelines, and

f. Harmonization of damage stability provisions in other IMO instruments, including the 1993 Torremolinos Protocol (probabilistic method).

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Paul Cojeen, U.S. Coast Guard Headquarters, Commandant (G–MSE–2), Room 1308, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: October 23, 2002.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–28928 Filed 11–13–02; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to authority delegated to the United States Trade Representative (''USTR'') in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415), USTR is making technical corrections to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice. These modifications correct several inadvertent errors and omissions in subheadings 9903.72.30 through 9903.74.24 of the HTS so that the intended tariff treatment is provided. Pursuant to authority delegated to the USTR in Presidential Proclamation 7576 of July 3, 2002 (67 FR 45285), USTR has determined that it is appropriate to add Macedonia to the list of countries in subdivision (d)(i) of U.S. Note 11 to subchapter III of chapter 99 of the HTS (''Note 11''), and is modifying that note accordingly.

EFFECTIVE DATE: The corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the annex to this notice.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW., Room 501, Washington DC, 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, pursuant to section 203 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2253), the President issued Proclamation 7529 (67 FR 10553), which imposed tariffs and a tariff-rate quota on (a) Certain flat steel, consisting of: slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel; (b) hot-rolled bar; (c) cold-finished bar; (d) rebar; (e) certain tubular products; (f) carbon and alloy fittings; (g) stainless steel bar; (h) stainless steel rod; (i) tin mill products; and (j) stainless steel wire, as provided for in subheadings 9903.72.30 through 9903.74.24 of the Harmonized Tariff Schedule of the United States (''HTS'') (''safeguard measures'') for a period of three years plus 1 day. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EST, on March 20, 2002, Proclamation 7529 modified subchapter III of chapter 99 of the HTS so as to provide for such increased duties and a tariff-rate quota. Proclamation 7529 also delegated to the USTR the authority to consider requests for exclusion of a particular product submitted in accordance with the procedures set out in 66 FR 54321, 54322–54323 (October 26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provision created by the annex to that proclamation to exclude such particular product from the pertinent safeguard measure. On April 5, 2002, USTR published a notice in the **Federal Register** excluding particular products from the safeguard measures, and modified the HTS accordingly. 67 FR 16484. On July 3, the President issued Proclamation 7576, which extended the period for granting exclusions until August 31, 2002. On July 12, 2002, and August 30, 2002, USTR published notices in the **Federal Register** excluding additional products from the safeguard measures, and modified the HTS accordingly. 67 FR 46221 and 67. FR 56182.

On March 19, 2002, June 4, 2002, July 12, 2002, and August 30, 2002, USTR published **Federal Register** notices (67 FR 12635, 67 FR 38541, 67 FR 46221, and 67 FR 56182, respectively) making technical corrections to subchapter III of chapter 99 of the HTS to remedy several technical errors introduced in the annex to Proclamation 7529. These corrections ensured that the intended tariff treatment was provided. Since the publication of these **Federal Register** notices, additional technical errors and omissions in subchapter III of chapter 99 have come to the attention of USTR. The annex to this notice makes technical corrections to the HTS to remedy these errors and omissions. In particular, the annex to this notice corrects errors in the descriptions of the physical dimensions or chemical composition of certain products excluded from the application of the safeguard measures.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the Annex to this notice.

In clause (3) of Proclamation 7529, the President excluded imports of certain steel products that are the product of World Trade Organization (''WTO'') member developing countries, as provided in subdivision (d)(i) of Note 11. Proclamation 7576 authorized the USTR, upon publication of a notice in the **Federal Register** of his determination that it is appropriate to add WTO member developing countries to the list of countries in subdivision (d)(i) of U.S. Note 11, to add such countries to that list. I have determined that it is appropriate to add Macedonia to that list, and am modifying the list accordingly.

Robert B. Zoellick,
United States Trade Representative.

Annex

Subchapter III of chapter 99 of the Harmonized Tariff Schedule (HTS) is modified as set forth in this annex, with bracketed matter included to assist in the understanding of the modifications. The following provisions supersede matter now in the HTS, with the new subheadings being inserted by this notice set forth in columnar format and the material inserted in the HTS columns entitled ''Heading/Subheading'', ''Article Description'', ''Rates of Duty 1 General'', ''Rates of Duty 1 Special'', and ''Rates of Duty 2'', respectively. The corrections to the text of individual subdivisions of U.S. note 11 to such subchapter III set forth herein, and to their associated subheadings, shall be effective with respect to covered goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EDT on the date that each such subdivision of U.S. note 11 to subchapter III became effective, or in the case of corrections to text previously modified the effective date of such previous modification to such subdivision as appropriate. New subdivision (c)(ccviii) of U.S. note 11 shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after September 1, 2002. The new subdivisions (c)(ccix) to (c)(ccxi) of U.S. note 11 shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 20, 2002. The new subheadings established by item 3 of this annex and associated conforming changes shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST, on the date that the related subdivision of such U.S. note 11 was or is established. The modification made by item 4 of this annex shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 15, 2002.

1. U.S. note 11 to such subchapter III is hereby modified as follows:

(i) In subdivision (b)(vii)(B), ''SAE 1008'' is deleted and ''SAE 1010'' is inserted in lieu thereof, the phrase ''or equal to'' is inserted immediately after the phrase ''less than'', and ''SAE standard 783'' is deleted and the phrase ''SAE standard 788'' is inserted in lieu thereof;

(ii) in subdivision (b)(vii)(C), ''and maximum 1 percent other materials'' is deleted and '', less than 0.05 percent phosphorus, less than 0.35 percent iron and less than or equal to 1 percent other materials'' is inserted in lieu thereof, and ''SAE standard 792'' is deleted and ''SAE standard 797'' is inserted in lieu thereof;

(iii) in subdivision (b)(vii)(H), ''SAE 1008'' is deleted and ''SAE 1010'' is inserted in lieu thereof, ''20 percent tin'' is deleted and ''19 percent to 20 percent tin'' is inserted in lieu thereof, and ''1 percent copper,'' is deleted and ''1 percent to 1.2 percent copper, less than'' is inserted in lieu thereof;

(iv) in subdivision (b)(vii)(I), ''SAE 1008'' is deleted and ''SAE 1010'' is inserted in lieu thereof, ''less than 1 percent in the aggregate of other materials'' is deleted and ''less than or equal to 1 percent in the aggregate of other materials'' is inserted in lieu thereof, ''SAE standard 792'' is deleted and ''SAE standard 797'' is inserted in lieu thereof, and ''38 percent or more but not more than 50 percent PTFE,'' is deleted, and '', with the remainder made up of polytetrafluoroethylene (PTFE) (approximately 38 percent to 52 percent) and up to'' is inserted before ''2 percent in the aggregate of other materials'';

(v) in subdivision (b)(vii)(D), ''SAE 1008'' is deleted and ''SAE 1010'' is inserted in lieu thereof, ''and less than 0.35 percent iron'' is deleted and '', less than 1 percent zinc and less than or equal to 1 percent other materials'' is inserted in lieu thereof, ''SAE standard 792'' is deleted and ''SAE standard 797'' is inserted in lieu thereof, and ''and the remainder (approx. 40–52 percent) of PTFE'' is deleted and ''and the remainder made up of PTFE (approximately 38 percent to 52 percent) and less than 2 percent in the aggregate of other materials'' inserted in lieu thereof;

(vi) in subdivision (b)(ix)(A), ''+10%'' is deleted and ''±10%'' is inserted in lieu thereof in three appearances, and ''−0/+1.588 mm'' is deleted and ''±1.588 mm'' is inserted in lieu thereof;

(vii) in subdivision (b)(xi)(B), the phrase ''manganese 0.90 to 0.98'' is deleted and ''manganese not over 0.98'' is inserted in lieu thereof; (viii) in subdivision (b)(xxii)(D), the phrase ''manganese 1.4 to 1.7'' is deleted and ''manganese 1.4 to 1.8'' is inserted in lieu thereof;

(ix) in subdivison(b)(xxiii)(C), the phrase ''900 to 1,200 kg per cm width'' is deleted and ''143 to 179 kg per cm width'' is inserted in lieu thereof; and the phrase ''600 and 900 kg per cm width'' is deleted and ''89 and 143 kg per cm width'' is inserted in lieu thereof;

(x) in subdivision (b)(xxvi)(B) and its paragraphs (I) through (IV), at each occurrence the word ''coated'' is replaced by the word ''treated'' and the word ''coating'' is replaced by the word ''treatment';

(xi) in subdivison (b)(xxxii)(E), the phrase ''± 0.2997 mm over'' is deleted and ''±0.7620 mm per'' is inserted in lieu thereof; and ''± 0.7620 mm over'' is deleted and ''±0.7620 mm per'' is inserted in lieu thereof;

(xii) in subdivision (b)(xxxiv)(B), the phrase '', provided for in subheading 7226.92.80'' is deleted

(xiii) in subdivision (b)(xxxiv)(M), the phrase ''hardened and tempered'' is deleted;

(xiv) in subdivision (b)(xxxiv)(N), ''1075'' is deleted and ''1095'' is inserted in lieu thereof;

(xv) in subdivision (b)(xxxvii), ''DZ'' is deleted and ''DQ'' is inserted in lieu thereof; the phrase ''flatness to be 3.18 mm'' is deleted and the phrase ''center buckle to be 3.18 mm'' is inserted in lieu thereof; the phrase ''75 MG each side maximum'' is deleted and the phrase ''oil weight of 250 mg/m2 maximum on any one side'' is inserted in lieu thereof; and the phrase ''9071.85 kg maximum coil weights,'' is deleted;

(xvi) in subdivision (b)(xliv)(A), the phrase ''provided for in subheading 7326.90.85'' is deleted;

(xvii) in subdivision (b)(xliv)(C), the phrase ''entered in an aggregate annual quantity not to exceed 36,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive,'' is inserted after the phrase ''tin-coated steel,'', and the phrase ''858.8375 mm or more but not over 862.0125 mm or a width of'' is inserted after ''of a width of'';

(xviii) in subdivision (c)(i)(A), the phrase ''entered in an aggregate annual quantity not to exceed 45,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive,'' is deleted;

(xix) in subdivision (c)(i)(B), the phrase ''entered in an aggregate annual quantity not to exceed 5,700 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive,'' is deleted; and in subdivision (c)(i)(C), the phrase ''entered in an aggregate annual quantity not to exceed 17,500 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive,'' is deleted;

(xx) in subdivision (c)(vi)(A), ''carbon 0.90 to 1.30'' is deleted and ''carbon 0.090 to 0.130'' is inserted in lieu thereof;

(xxi) in subdivision (c)(xii), the phrase ''aluminum 0.070 to 0.100'' is deleted and the phrase ''aluminum not more than 0.100'' is inserted in lieu thereof;

(xxii) in subdivisions (c)(xviii)(A), (B) and (C) at each occurrence ''MN/6 (Cr'' is deleted and ''Mn/6 + (Cr'' is inserted in lieu thereof;

(xxiii) in subdivision (c)(xviii)(A), the phrase ''of 0.29 to 0.035'' is deleted and ''of 0.29 to 0.35'' is inserted in lieu thereof;

(xxiv) in subdivision (c)(xxiii)(A), the phrase ''sometimes referred to as (but not limited to) products known as Socatri 1000;'' is inserted after the phrase ''corrosive attack;';

(xxv) in subdivision (c)(xxiii)(B), the phrase ''sometimes referred to as (but not limited to) products known as Cromax;'' is inserted after the phrase ''without corrosion;';

(xxvi) in subdivision (c)(xxviii), the phrase ''semi-processed silicon electrical steel'' is deleted, and:

(A) in paragraphs (A) and (B), ''Products'' is deleted and the phrase ''Semi-processed silicon electrical steel products,'' is inserted before ''entered'';

(B) in paragraph (C), the phrase ''fully processed'' is inserted after ''bearing,'';

(xxvii) in subdivision (c)(xxix)(A), ''0264'' is deleted and ''0.264'' is inserted in lieu thereof;

(xxviii) in subdivision (c)(xxxi)(B), the phrase ''0.44 m x 82.87 cm'' is deleted and ''0.44 mm x 82.87 cm'' is inserted in lieu thereof; and ''0.38 mm x 91.76'' is deleted and ''0.38 mm x 91.76 cm'' is inserted in lieu thereof;

(xxix) in subdivision (c)(xxxiii)(A), the text following ''not revealing oxides'' is deleted and ''greater than 1 micrometer; and inclusion groups or clusters shall not exceed 5 micrometers in length;'' is inserted in lieu thereof;

(xxx) in subdivision (c)(xxxiii)(C), the text following ''not revealing oxides'' is deleted and ''greater than 1 micrometer; and inclusion groups or clusters shall not exceed 5 micrometers in length; or'' is inserted in lieu thereof;

(xxxi) in subdivision (c)(xlii), the text is deleted and ''Thermal refined, hot rolled, water quenched and tempered steel bar, the foregoing containing (percent by weight): carbon 0.43 to 0.48 and manganese 0.75 to 0.95; hardness 215 to 255 HV; microstructure with layer of tempered martensite for 5 mm to 8 mm followed by 1 mm of tempered martensite and transition products and general bar structure of pearlite and ferrite; maximum decarburization 0.8 percent of bar diameter; designated as X–075;'' is inserted in lieu thereof;

(xxxii) in subdivision (c)(xliii)(C), the phrase ''manganese 1.4 to 1.7'' is deleted and ''manganese 1.4 to 1.8'' is inserted in lieu thereof;

(xxxiii) in subdivision (c)(xlvi)(C), ''A1001CSB'' is deleted and ''A1011CSB'' is inserted in lieu thereof;

(xxxiv) in subdivision (c)(xlviii), the phrase ''not further worked that hot-rolled, with the following features: sulfur content 0.005 percent by weight maximum; elongation: 18 percent minimum/31 percent maximum for 1.6 mm to 2.0 mm, 20 percent minimum/32 percent maximum for 2.0 mm to 3.2

mm, 21 percent minimum/33 percent maximum for 3.2 mm to 6.3 mm, 22 percent minimum for 6.3 mm to 12.00 mm; total thickness tolerance: 0.20 mm maximum for 1.6 mm to 4.0 mm, 0.25 mm maximum for 4.0 mm to 6.0 mm, 0.30 mm maximum for 6.0 mm to 8.0 mm, 0.35 mm maximum for 8.0 mm to 12.0 mm; with'' is deleted;

(xxxv) in subdivision (c)(l)(A), ''158.4 MPa'' is deleted and ''758.4 MPa'' is inserted in lieu thereof;

(xxxvi) in subdivision (c)(lv), the phrase ''and entered in an aggregate annual quantity not to exceed 75,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive;'' is deleted;

(xxxvii) in subdivision (c)(lxii), ''flat-rolled tin mill products'' is deleted and ''flat-rolled products'' is inserted in lieu thereof, and the word ''minimum'' is inserted after the phrase ''21 percent';

(xxxviii) in subdivision (c)(lxiii), the text following ''chlorine in water phase),'' is deleted and ''and exposed to a temperature of 45°C for 4 weeks, the eluted mass of the coating is less than 100 mg;'' is inserted in lieu thereof;

(xxxix) in subdivision (c)(lxxii)(F), ''strength 1,314 MPa'' is deleted and ''strength 1,413.4 MPa'' is inserted in lieu thereof;

(xl) subdivision (c)(lxxiii) is modified to read as follows:

''(lxxiii) Flat-rolled products, designated as X–048, N–316 or N–472 and meeting the characteristics described below:

(A) Coated with zinc-aluminum allow consisting of 95 percent zinc and 5 percent aluminum by weight, sometimes referred to as (but not limited to) products known as ''Ragal Galfan''; thickness not over 0.75 mm; width 1,220 mm or more;

(B) coated with hot dipped 95 percent zinc/5 percent aluminum/trace mischmetal alloy coating; sometimes referred to as (but not limited to) products known as ''Galfan''; thickness 0.4572 mm to 1.4224 mm; with coating of GF 30, produced in accordance with ASTM A–875;

(C) ASTM A875 DDS interstitial-free (IFS) boron-treated for antibrittleness; yield strength 220 MPa maximum; tensile strength 270 to 350 MPa; elongation 34 percent minimum in a standard ASTM sample; with chemical composition (percent by weight): carbon not over 0.0044, manganese 0.70 to 0.20, boron 0.0002 to 0.0009, aluminum of 0.01 to 0.10, phosphorus not over 0.015 and sulfur not over 0.020; sometimes referred to as (but not limited to) products known as ''Galfan''; or

(D) ASTM A875 interstitial-free (IFS); yield point 230 MPa minimum; tensile strength 325 to 400 MPa; elongation 34 percent minimum in a standard ASTM sample; Langford coefficient (n) 0.17; minimum anisotropy ratio (r) 1.5 minimum in transverse direction; with chemical composition (percent by weight): carbon not over 0.009, titanium 0.050 or greater and phosphorus 0.02 to 0.04; sometimes referred to as (but not limited to) products known as ''Galfan'';''

(xli) in subdivision (c)(lxxxv), the phrase ''sulfur not over 0.003'' is deleted and ''sulfur not over 0.009'' is inserted in lieu thereof;

(xlii) in subdivisions (c)(lxxxix)(B), (E), (H) and (I), the phrase ''0.6 percent carbon'' is deleted and ''0.28 percent carbon'' is inserted in lieu thereof; and in subdivision (c)(lxxxix)(D), the phrase ''0.06 percent carbon'' is deleted and ''0.28 percent carbon'' is inserted in lieu thereof;

(xliii) in subdivision (c)(xcviii)(A), the phrase ''DSE 220'' is deleted and ''SE 220'' is inserted in lieu thereof; the phrase ''yield strength 220 to 270 MPa'' is deleted and ''yield strength 220 to 280 MPa'' is inserted in lieu thereof; and the phrase ''tensile strength 320 to 370 MPa'' is deleted and ''tensile strength 320 to 380 MPa'' is inserted in lieu thereof;

(xliv) in subdivision (c)(xcviii)(B), the phrase ''HRB 50 to 65'' is deleted and ''HRB 45 to 65'' is inserted in lieu thereof;

(xlv) in subdivision (c)(civ), the phrase ''quantity not to exceed 3,000 t'' is deleted and ''entered in an aggregate quantity not to exceed 3,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive'' is inserted lieu thereof;

(xlvi) in subdivision (c)(cxi), ''A1001CSB'' is deleted and ''A1011CSB'' is inserted in lieu thereof;

(xlvii) in subdivision (c)(cxv), the phrase ''aluminum 0.02 to 0.05'' is deleted and ''aluminum 0.01 to 0.05'' is inserted in lieu thereof;

(xlviii) in subdivision (c)((cxvi), the phrase ''with iron as the only remaining input'' is deleted;

(xlix) in subdivision (c)(cxxiv), ''minimum Charpy-notch'' is deleted and ''maximum Charpy-notch'' is inserted in lieu thereof;

(l) in subdivision (c)(cxxx)(C), ''0.967'' is deleted and ''0.96'' is inserted in lieu thereof;

(li) in subdivision (c)(cxxx)(E), the phrase ''lead 33 to 37, aromatic polyester 28 to 32 and other materials less than 2 percent with a balance of polytetrafluoroethylene (PTFE)'' is deleted and the phrase ''carbon 13 to 17, aromatic polyester 13 to 17, with a balance (approximately 66 to 74) of polytetrafluoroethylene (PTFE)'' is inserted in lieu thereof;

(lii) in subdivision (c)(cxxx)(F), ''1.22'' is deleted and ''1.2'' is inserted in lieu thereof;

(liii) in subheading (c)(cxxxv), ''N–376'' is deleted and ''N–367'' is inserted in lieu thereof;

(liv) in subdivisions (c)(cxlviii)(A), (B), (C), (G), (H), (I), (J) and (L), the phrase ''0.60 percent carbon'' is deleted and ''0.28 percent carbon'' is inserted in lieu thereof;

(lv) subdivision (c)(cliv) is modified to read as follows:

''(cliv) certain stainless steel products, designated as N–378, as described below:

(A) Straight bars and rods, or round wire on spools or in coils, all the foregoing with the specifications below:

(I) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 5.0 to 6.0, and balance iron; sometimes referred to as (but not limited to) products known as ''Kanthal APM.'';

(II) chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 4.30 to 5.30, and balance iron; sometimes referred to as (but not limited to) products known as ''Kanthal D'';

(III) chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.07, manganese not over 0.40, chromium 20.50 to 23.50, aluminum 4.80 to 5.8, and balance iron; sometimes referred to as (but not limited to) products known as ''Kanthal AF''; or

(IV) chemical composition (percent by weight): carbon not greater than 0.08, silicon not greater than 0.70, manganese not greater than 0.40, aluminum 5.30 to 6.30, chromium 20.50 to 23.50, balance iron; sometimes referred to as (but not limited to) products known as ''Kanthal A–1''; or

(B) *round wire on spools or in coils, with the specifications below:*

(I) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 4.60 to 5.60 and balance iron; sometimes referred to as (but not limited to) products known as ''Kanthal DT'';

(II) chemical composition (percent by weight): carbon not over 0.10, manganese not over 1.00, silicon 1.60 to 2.50, chromium 18.0 to 21.0, nickel 34.0 to 37.0 and balance iron; sometimes referred to as (but not limited to) products known as ''Nikrothal 40'';

(III) chemical composition (percent by weight): carbon not over 0.10, manganese not over 1.00, silicon 1.60 to 2.50, chromium 18.0 to 21.0, nickel 34.0 to 37.0 and balance iron; sometimes referred to as (but not limited to) products known as ''Nikrothal 40'';

(IV) chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 4.80 to 5.80 and balance iron; sometimes referred to as (but not limited to) products known as ''Kanthal A''; or

(V) chemical composition (percent by weight): carbon not over 0.08, silicon not

over 0.70, manganese not over 0.50, chromium 14.00 to 16.00, aluminum 3.80 to 4.80 and balance iron; sometimes referred to as (but not limited to) products known as ''Alkrothal 14'';

(lvi) in subdivision (c)(clix), the phrase ''thickness 0.020 mm or more but not over 0.045 mm'' is deleted and ''thickness 0.508 mm or more but not over 1.143 mm'' is inserted in lieu thereof;

(lvii) in subdivision (c)(clxiv)(A) (N–444), ''tensile strength from 680 to 800 MPa; minimum yield strength 630 MPa, minimum elongation 10 percent,'' is inserted before ''number 3 slit edge'';

(lviii) in subdivision (c)(clxxiii), the phrase ''during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive'' is inserted after ''not to exceed 1,000 t'', and the phrase ''RAGALLITEC DPF'' is deleted and the phase ''RAGAL LITEC DPF'' is inserted in lieu thereof;

(lix) in subdivision (c)(clxxvi), the text is deleted and the following is inserted in lieu thereof:

Hot-rolled flat-rolled products, in coils, designated as N–316, the foregoing of API Grade X56 hydrogen-induced cracking resistant (NACE) steel with the following characteristics: tensile properties guaranteed per X56 for pipe with coil tensile properties of: yield strength 390 to 510 MPa, tensile strength 490 to 600 MPa, elongation not less than 27 percent, and resilience of 8 J at −40°C; thicknesses from 2.54 mm to 16 mm; width from 1.02 m to 2.01 m; with chemical composition (percent by weight): carbon not over 0.1, manganese not over 1.6, phosphorus not over 0.015, sulfur not over 0.02, silicon not over 0.3, aluminum not over 0.06, copper not over 0.1, nickel not over 0.1, chromium not over 0.1 and vanadium not over 0.05; and with a hydrogen-induced cracking guarantee with an average of 9 cuts of: NACE solution A pH 3: crack length ratio less than 10 percent, crack thickness ratio less than 3 percent and crack sensitivity ratio less than 1 percent; and NACE solution B pH 5: crack length ratio less than 5 percent, crack thickness ratio less than 1.5 percent and crack sensitivity ratio less than 1 percent;'';

(lx) in subheading (c)(clxxxv), ''temper rolled; meeting SAEJ1392 O50; whether or not pickled and oiled or tension leveled'' is deleted and ''whether or not rolled or pickled and oiled or tension leveled, meeting SAEJ1392 O50;'' is inserted in lieu thereof; ''carbon 0.030 to 0.89'' is deleted and ''carbon 0.035 to 0.084'' is inserted in lieu thereof; ''manganese 0.190 to 0.309'' is deleted and ''manganese 0.195 to 0.304'' is inserted in lieu thereof; ''aluminum 0.010 to 0.060'' is deleted and ''aluminum 0.015 to 0.055'' is inserted in lieu thereof; ''niobium (columbium) 0.025 to 0.035'' is deleted and ''niobium (columbium) 0.020 to 0.030'' is inserted in lieu thereof; ''titanium 0.005 to 0.025'' is deleted and ''titanium not over 0.005'' is inserted in lieu thereof; ''thickness of 1.80 mm to 2.49 mm'' is deleted and ''thickness 1.96 mm to 3.98 mm'' is inserted in lieu thereof; and ''with tolerance of one half standard gauge tolerance specified in ASTM 568'' is deleted and ''with the following gauges (specified in millimeters, per ASTM 568): 1.96 −0/+0.17, 2.00 −0/+0.15, 2.13 −0/+ 0.20, 2.23 −0/+0.20, 2.28 −0/+0.20, 2.99 −0/+0.20, 3.07 −0/+0.20, 3.35 −0/+0.20, 3.40 −0/+0.20, 3.83 −0/+0.22, 3.98 −0/+0.25'' is inserted in lieu thereof;

(lxi) in subdivision (c)(clxxxvii), the phrase ''certified that coiled tubing will satisfy fatigue test (SPE papers 22820, 38407, and 54482) constantly;'' is deleted and ''for use in the production of tubing able to meet the requirements of the coiled tubing fatigue test in SPE papers 22820, 38407 and 54482;'' is inserted in lieu thereof;

(lxii) in subdivision (c)(cxcv) ''API6A and NACE MR0175;'' is deleted and ''API6A or NACE MR0175'' is inserted in lieu thereof;

(lxiii) in subdivision (c)(cxcvi), the language ''microstructure containing complex oxides of lime-silico-aluminate (comprising metallurgical phases anhorthite and/or pseudowollastonite); with calcium content from 30 to 300 ppm and oxygen from 70 to 300 ppm, and with calcium-to-oxygen ratio from 0.2 to 0.6; sometimes referred to as (but not limited to) products known as 'UGIMA' '' is deleted and ''austenitic, ferritic or martensitic crystalline structure as applicable, and containing oxides of lime silicoaluminate that form the CaO-Al_2O_3–SiO_2 ternary composition primarily comprising anorthite and/or pseudowollastonite phases; with calcium content between 30 and 100 ppm and oxygen content between 70 and 200 ppm; products referred to as 'UGIMA' '' is inserted in lieu thereof;

(lxiv) in subdivision (c)(cc)(A), ''0.195 mm to 0.215 mm (tolerance +8/−5 percent),'' is deleted and ''0.195 mm (tolerance +5/−8 percent) or 0.215 mm (tolerance +5/−8 percent),'' is inserted in lieu thereof;

(lxv) in subdivision (c)(cc)(B), the phrase ''tolerance +8/−5 percent'' is deleted and ''tolerance +5/−8 percent'' is inserted in lieu thereof;

(lxvi) in subdivision (c)(ccii)(A) the phrase ''[add exception?]'' is deleted, and ''in any heat treatment class, or with outside diameters of greater than 60.96 cm in heat treatment classes 30 or higher;'' is inserted in lieu thereof;

(lxvii) in subdivision (c)(ccvi), ''12.00 mm or more but not over 30.00 mm'' is deleted and ''10.00 mm or more but not over 35.00 mm'' is inserted in lieu thereof; and

(lxviii) at the end of subdivision (c) of such note 11, the following new subdivisions are inserted:

''(ccviii) Stainless steel bar, if entered in an aggregate quantity not to exceed 12 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing with chemical composition (percent by weight): carbon 0.35 to 0.45, silicon 0.20 to 0.50, manganese 0.50 to 0.90, phosphorus not over 0.025, sulfur not over 0.0050, chromium 15.0 to 17.0, nickel 0.70 to 1.00, molybdenum 0.80 to 1.20, niobium (columbium) not over 0.080 and copper not over 0.30; sometimes referred to as (but not limited to) products known as M300 High Chromium Mold Steel; martensitic stainless; either (I) round with diameter from 12.7 mm to 762 mm, or (II) flat, thickness 11 mm to 610 mm, width 45 mm to 915 mm, vacuum degassed, forged or rolled; the foregoing designated as N–387;

(ccix) Cold-rolled, electrocoated on one side with zinc-nickel coating, steel products, with the following characteristics: thickness 0.70 mm (+/−0.04 mm) to 0.75 mm (+/−0.04 mm), width 1485 mm to 1570 mm; with chemical composition (percent by weight): carbon 0.0010 to 0.0023, sulfur not more than 0.006, manganese not more than 0.12; titanium stabilized; certified by the importer to have the following mechanical properties using JIS (Japan Industry Standard) testing methods: elongation not less than 47 percent nor more than 51 percent, yield strength not less than 140 MPa nor more than 165 MPa, tensile strength 270 MPa to 300 MPa, N–Value, equal to or greater than 0.25 and R–Value equal or greater than 1.9 (in all directions: longitudinal, transverse and diagonal); the foregoing sometimes referred to as (but not limited to) products known as EDDQ Zn-Ni UC, and designated as N–380;

(ccx) Hot-rolled flat rolled products, alloy and non-alloy, not further worked than hot rolled, with the following characteristics: sulfur content not more than 0.005 percent by weight, tensile strength not less than 780 MPa, elongation at least 18 percent but not more than 31 percent for 1.6 mm to 2.0 mm thicknesses, at least 20 percent but not more than 32 percent for 2.0 mm to 3.2 mm thicknesses, at least 21 percent but not more than 33 percent for 3.2 mm to 6.3 mm thicknesses, at least 22 percent for 6.3 mm to 12.00 mm thicknesses; thickness tolerance: +/−0.10 mm for 1.6 mm to 4.0 mm thicknesses, +/−0.125 mm for 4.0 mm to 6.0 mm thicknesses, +/−0.15 mm for 6.0 mm to 8.0 mm thicknesses, +/−0.175 mm for 8.0 mm to 12.0 mm thicknesses; the foregoing designated as X–075;

(ccxi) Hot-rolled flat-rolled products, designated as N–316, dual phase with low silicon; with thickness of 2.5 mm to 6 mm; width not exceeding 1.46 m; tensile strength of 750 MPa to 900 MPa; elongation not less than 14 percent in thickness of 2.5 mm to 2.999 mm, elongation not less than 15

percent in thickness of 3 mm to 6 mm; with chemical composition (percent by weight): carbon 0.07 to 0.09, manganese 0.9 to 0.98, phosphorus not over 0.045, sulfur not over 0.002, silicon not over 0.25, aluminum 0.02 to 0.06, copper not over 0.10, nickel not over 0.10 and chromium not over 0.8; sometimes referred to as (but not limited to) products known as Usiphase D 80;

(ccxii) Ball-bearing steel (as defined in additional U.S. note 1(h) to chapter 72), bars and rods not further worked than cold-formed or cold finished, having a diameter less than 47.625 mm, the foregoing designated as X–015 or N–438;''

(lxix) in subdivision (d)(iv), the text ''the phrase ''products of Canada'' ''is deleted and ''the reference to products of Canada or of Mexico'' is inserted in lieu thereof, and ''or in Mexico'' is inserted after ''in Canada''.

2. The enumerated subheadings in such subchapter III are modified as follows:

(i) Subheading 9903.72.55 is deleted;

(ii) in subheading 9903.72.67, ''or X–011'' is inserted after ''X–061'';

(iii) in subheading 9903.72.68, the phrase ''or 11(c)(ccx)'' is inserted after ''note 11(b)(xviii)'';

(iv) in subheading 9903.74.39, the phrase ''or 11(c)(ccxi)'' is inserted after ''note 11(c)(lii)'';

(v) in subheading 9903.74.42, the phrase '', and entered in an aggregate annual quantity not to exceed 75,000 t'' is deleted;

(vi) in subheading 9903.74.75, the phrase ''or note 11(c)(ccxi)'' is inserted after ''note 11(c)(xlvi)'';

(vii) subheadings 9903.72.55, 9903.74.66 through 9903.74.73, 9903.74.92, 9903.74.93, 9903.75.11, 9903.75.33, 9903.75.34, 9903.75.35, and 9903.75.47 are deleted;

(viii) the second appearing subheading 9903.74.82 is redesignated as 9903.75.13;

(ix) the second appearing subheading 9903.74.83 is redesignated as 9903.75.14;

(x) the second appearing subheading 9903.77.86 is redesignated as 9903.76.36;

(xi) in subheading 9903.75.04, the phrase ''and entered in an aggregate quantity not to exceed 1,000 t during a time period specified in such note'' is inserted after ''subchapter'';

(xii) in subheading 9903.76.10, ''(cv)'' is deleted and ''(civ)'' is inserted in lieu thereof;

(xiii) in subheading 9903.76.29, ''11(c)(lxvii)'' is deleted and ''11(c)(lxvii)(A)'' is inserted in lieu thereof;

(xiv) the superior text to subheading 9903.73.42 is modified by deleting the phrase ''not further worked than hot-rolled, hot-drawn or extruded'';

(xv) in subheading 9903.76.79, the phrase ''and entered in an aggregate quantity not to exceed 300 t during a time period specified in such note'' is inserted after ''subchapter'';

(xvi) in subheading 9903.77.50, the phrase ''and entered in an aggregate quantity not to exceed 3,000 t during a time period specified in such note'' is inserted after ''subchapter'';

(xvii) in subheading 9903.77.68, the phrase ''and entered in an aggregate quantity not to exceed 5 t during a time period specified in such note'' is inserted after ''subchapter'';

(xviii) in subheading 9903.77.85, ''(v)'' is deleted and ''(xiv)'' is inserted in lieu thereof; and

(xix) in subheading 9903.76.20, the phrase ''and entered in an aggregate quantity not to exceed 1,000 t during a time period specified in such note'' is inserted after ''subchapter''.

3. The following new subheadings are inserted in numerical sequence:

	[Goods * * *:]			
''9903.74.50	Enumerated in U.S. note 11(c)(xviii)(A) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,953 t.	No change	No change	No change
9903.74.51	Enumerated in U.S. note 11(c)(xviii)(B) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,000 t.	No change	No change	No change
9903.74.52	Enumerated in U.S. note 11(c)(xviii)(C) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,000 t.	No change	No change	No change
9903.74.53	Enumerated in U.S. note 11(c)(xix) to this subchapter, and entered in an aggregate annual quantity not to exceed 3,850 t.	No change	No change	No change
9903.74.54	Enumerated in U.S. note 11(c)(xx)(A) or (B) to this subchapter	No change	No change	No change
9903.74.55	Enumerated in U.S. note 11(c)(xx)(C) to this subchapter, and entered in an aggregate annual quantity to exceed 439 t.	No change	No change	No change
9903.74.56	Enumerated in U.S. note 11(c)(xx)(D) to this subchapter, and entered in an aggregate annual quantity not to exceed 432 t.	No change	No change	No change
9903.74.57	Enumerated in U.S. note 11(c)(xx)(E) to this subchapter, and entered in an aggregate annual quantity not to exceed 6,500 t.	No change	No change	No change
9903.74.58	Enumerated in U.S. note 11(c)(ccx) to this subchapter	No change	No change	No change
9903.76.21	Enumerated in U.S. note 11(c)(ccix) to this subchapter	No change	No change	No change
9903.76.22	Enumerated in U.S. note 11(c)(cxxx) to this subchapter	No change	No change	No change
9903.76.37	Enumerated in U.S. note 11(c)(lxvii)(B) to this subchapter	No change	No change	No change
9903.77.02	Enumerated in U.S. note 11(c)(ccxii) to this subchapter	No change	No change	No change
9903.77.77	Enumerated in U.S. note 11(c)(cliv)(A) to this subchapter	No change	No change	No change
9903.77.78	Enumerated in U.S. note 11(c)(ccviii) to this subchapter and entered in an aggregate quantity not to exceed 12 t during a time period specified in such note.	No change	No change	No change
9903.78.15	Enumerated in U.S. note 11(c)(cliv) to this subchapter	No change	No change	No change''

Conforming changes:

Subheading 9903.72.57 is modified by deleting ''9903.74.47'' and by inserting in lieu thereof ''9903.74.58''.

Subheading 9903.72.78 is modified by deleting ''9903.75.11'' and by inserting in lieu thereof ''9903.75.14''.

Subheading 9903.73.18 is modified by deleting ''9903.76.20'' and by inserting in lieu thereof ''9903.76.22''.

Subheading 9903.73.35 is modified by deleting ''9903.76.36'' and by inserting in lieu thereof ''9903.76.37''.

Subheading 9903.73.55 is modified by deleting ''9903.77.01'' and by inserting in lieu thereof ''9903.77.02''.

Subheading 9903.74.01 is modified by deleting ''9903.77.76'' and by inserting in lieu thereof ''9903.77.78''.

Subheading 9903.74.12 is modified by deleting ''subheading 9903.77.85'' and by inserting in lieu thereof ''subheadings 9903.77.85 through 9903.77.86''.

Subheading 9903.74.18 is modified by deleting ''9903.78.14'' and by inserting in lieu thereof ''9903.78.15''.

4. U.S. note 11(d)(i) to such subchapter III is modified by inserting in alphabetical sequence, in the enumeration of developing countries that are members of the World Trade Organization and that are excluded from the import relief set forth in subchapter III, ''Macedonia,''.

[FR Doc. 02–28866 Filed 11–13–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 396X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Franklin County, KS

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon and discontinue service over a 0.21-mile line of railroad between milepost 58.05 and milepost 58.26 in Ottawa, Franklin County, KS. The line traverses United States Postal Service zip code 66067.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 14, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 25, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 4, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 19, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by BNSF's filing of a notice of consummation by November 14, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: November 5, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–28803 Filed 11–13–02; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–844X]

Santa Maria Valley Railroad Company—Abandonment Exemption—in Santa Barbara County, CA

Santa Maria Valley Railroad Company (SMVRR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 4.87-mile line of railroad between milepost 9.75 at College Drive and milepost 14.62 at Gates Station, in the city of Santa Maria, in Santa Barbara County, CA. The line traverses United States Postal Service Zip Code 93454.

SMVRR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past 2 years and any overhead traffic could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 14, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve

environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 25, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 4, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to SMVRR's representative: R. Curtis Ballantyne, Hill, Farrer & Burrill LLP, One California Plaza, 37th Floor, 300 South Grand Avenue, Los Angeles, CA 90071.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

SMVRR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 19, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SMVRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by SMVRR's filing of a notice of consummation by November 14, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *''http://www.stb.dot.gov.''*

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Decided: November 5, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–28804 Filed 11–13–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Administrative Matter No. 3]

Implementation of the Regulatory Flexibility Act—STB Issuance No. 52

AGENCY: Surface Transportation Board, Transportation.

ACTION: Amendment of internal procedures.

SUMMARY: The Surface Transportation Board (STB) is revising its internal procedures for implementing the Regulatory Flexibility Act, which requires agencies to consider the effects of their rules on small entities.

EFFECTIVE DATE: The STB's revised internal procedures are effective on November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. (Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, requires federal government agencies, including the STB, to consider the effects of their regulations on ''small entities.'' Under the RFA, small entities are defined as small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The RFA requires that agencies: (1) Publish lists of rules that have, or are likely to have in the future, a significant economic impact on small entities; (2) adopt procedures for furthering the participation of small entities in the rulemaking process; (3) on a rulemaking-by-rulemaking basis, determine the extent to which each rulemaking will affect small entities; (4) for rules that are expected to have a significant adverse effect on small entities, describe the steps taken to minimize the adverse effect in a manner that is consistent with the stated objectives of applicable statutes; and (5) provide for review of rules for small-entity impact every 10 years.

On October 9, 1981, our predecessor agency, the Interstate Commerce Commission (ICC or Commission), adopted internal procedures to implement the RFA, in Commission Issuance No. 52, *Implementation of the Regulatory Flexibility Act,* and published these procedures in the **Federal Register** at 46 FR 50158.[1] This issuance needs to be updated to reflect the STB's assumption of statutory functions of the ICC, intervening changes in the STB's internal organization and procedures, and experience under the RFA. Accordingly, we are revising STB Issuance No. 52 as set forth in the Appendix to this notice. Because our revision governs the internal operations and procedures of the STB, it is being issued in final form, and public comments are not being sought. This issuance is intended solely to provide for the internal processing of issues arising under the RFA, not to resolve substantive issues involving the interpretation and application of that statute.

Decided: November 7, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

Appendix

52. Implementation of the Regulatory Flexibility Act

A. *Purpose.*—This issuance sets forth how the Surface Transportation Board (Board) implements the Regulatory Flexibility Act (RFA) in its formulation of agency policies and regulations.

B. *Background.*—The RFA was first enacted by Congress on September 19, 1980, Public Law 96–354 (94 Stat. 1164), and later amended on March 29, 1996, Public Law 104–121 (110 Stat. 847). The RFA directs that agencies endeavor to fit their regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to those requirements. Towards that end, the RFA requires agencies, when appropriate, to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

C. *Policy.*—The Board and its predecessor agency, the Interstate Commerce Commission, have taken many steps to reduce the regulatory burden on small business entities. Under the RFA, the scope of the agency's analysis of economic impacts of proposed rulemakings encompasses not only small carriers, but also small communities and municipalities, shippers, receivers and others.

D. *Regulatory Flexibility Officer.*—The Director of the Office of Proceedings is designated Regulatory Flexibility Officer.

E. *Definitions.*—''Small entity'' shall have the same meaning as the terms ''small business'', ''small organization'' and ''small governmental jurisdiction,'' as defined below:

[1] Commission issuances became applicable to the STB upon its creation.

1. *Small Business*—Generally, an independently owned and operated business that is not dominant in its field. The Board may, however, redefine ''small'' for various transportation modes by rule in accordance with the RFA.

2. *Small Organization*—Generally, a non-profit enterprise that is independently owned and operated and is not dominant in its field.

3. *Small Governmental Jurisdiction*—Generally, a political unit covering an area with a population under 50,000.

F. *Initial Regulatory Flexibility Analysis (IRFA).*—

1. An analysis of the impact of the proposed rule on small entities will be included in each notice of proposed rulemaking (NPR) that may have a significant economic impact on a substantial number of small entities. Such analysis will contain:

a. A description of the reasons why action by the agency is being considered;

b. A succinct statement of the objectives of, and legal basis for, the proposed rule;

c. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

d. A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

e. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule.

2. In addition, each initial regulatory flexibility analysis will contain a description of any significant alternatives to the proposed rule that would accomplish the stated objectives of applicable statutes and would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis will discuss significant alternatives, such as:

a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

b. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

c. The use of performance, rather than design, standards; and

d. An exemption from coverage of the rule, or any part thereof, for such small entities.

G. *Final Regulatory Flexibility Analysis (FRFA).*—A final analysis of the impact of the proposed rule on small entities will be prepared on all final rules to be promulgated that may have a significant economic impact on a substantial number of small entities. The final analysis will contain:

1. A succinct statement of the need for, and the objectives of, the rule;

2. A summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of those issues, and a statement of any changes made in the proposed rule as a result of the comments;

3. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

4. A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or record; and

5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

H. *Certification.*—In any rulemaking involving a proposed or final rule that will not, if promulgated, have a significant economic impact on a substantial number of small entities, a certification of that fact can be made in lieu of an IRFA and a FRFA. Such ''certification of no significant economic impact'' must contain a statement explaining the factual basis for the certification. Any proceeding involving a final rule, in which a previous certification has been made, should state that, in the NPR, we certified that the rule would have no significant impact on a substantial number of small entities.

I. *Responsibilities.*—

1. *Regulatory Flexibility Officer.*

a. The Regulatory Flexibility Officer is directed to prepare for the Board the Regulatory Flexibility Agenda, which will be part of the semi-annual Unified Agenda of Federal Regulatory and Deregulatory Actions.

b. The Regulatory Flexibility Officer will also review the following agency actions:

(1) All NPRs—prior to assignment for preparation of a draft decision—to determine if the proposed rule may have a significant economic impact on a substantial number of small entities. The results of this review shall be clearly indicated and affixed to the NPR and forwarded to the originating STB Office; and

(2) All NPRs and final rules—after preparation of a draft decision but prior to circulation for Board vote—to reevaluate the appropriateness of any certification, IRFA or FRFA to determine the sufficiency thereof. In all cases, the Regulatory Flexibility Officer is assigned the task of preparing or causing to be prepared, as appropriate, certifications of no significant impact; exemptions from coverage of the rule, or any part thereof, for small entities, if appropriate, as discussed in 5 U.S.C. 603(c)(4); or waivers or delays of some or all of the IRFA requirement (*see* Section F, above) in response to an emergency that makes compliance impracticable, as provided in 5 U.S.C. 608.

2. *Heads of Offices* are to assure that all NPRs and final rules to be promulgated, including exemptions, waivers or delays, have been cleared by the Regulatory Flexibility Officer at the earliest possible stage. NPRs should be referred prior to assignment for preparation of a draft decision, and NPRs and final rules should be referred for appropriate review and clearance after preparation of the draft decision but prior to circulation for Board consideration. The circulation memorandum on each decision should indicate that the Regulatory Flexibility Officer has approved of the Regulatory Flexibility action taken, waived or delayed. In all cases in which a voluminous IRFA has been necessary, the originating Office may prepare a separate IRFA summary to be published in the **Federal Register** at the time of publication of the general NPR.

3. *The Regulatory Flexibility Officer* will assure that all certifications, IRFAs, and FRFAs are published in the **Federal Register** and served directly on the Chief Counsel for Advocacy, Small Business Administration, and that all waivers or delays are published in the **Federal Register**.

[FR Doc. 02–28907 Filed 11–13–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–81–86]

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 final regulation, FI–81–86 (TD 8513). Bad Debt reserves of Banks (§ 1.585–8).

DATES: Written comments should be received on or before January 13, 2003 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: Bad Debt Reserves of Banks.

OMB Number: 1545–1290.

Regulation Project Number: FI–81–86.

Abstract: Section 585(c) of the Internal Revenue Code requires large banks to change from reserve method of accounting to the specific charge off method of accounting for bad debts. Section 1.585–8 of the regulation contains reporting requirements in cases in which large banks elect (1) to include in income an amount greater than that prescribed by the Code; (2) to use the elective cut-off method of accounting: or (3) to revoke any elections previously made.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 15 min.

Estimated Total Annual Burden Hours: 625 hours.

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: November 4, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–28936 Filed 11–13–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Request for CCCAC Membership Applications

Summary: The United States Mint is accepting applications for membership to the Citizens Commemorative Coin Advisory Committee (CCCAC). The CCCAC was established in 1993 under Public Law 102–390 to: designate annually the events, persons, or places the committee recommends be commemorated by the issuance of commemorative coins; make recommendations with respect to the mintage level for any commemorative coin recommended; submit a report to the Congress containing a description of the recommendations and the Committee's reasons for such recommendation; and review and comment on proposed designs for commemorative coins and the 50 State Quarters® Program.

Membership consists of seven voting members appointed to four-year terms by the Secretary of the Treasury: three members shall be appointed from among individuals specially qualified to serve by reason of their education, training or experience in art, art history, museum or numismatic collection curation, or numismatics; three members shall be appointed from among individuals who will represent the interest of the general public; and one member shall be appointed from officers or employees of the United States Mint to represent the interests of the United States Mint.

The Committee is subject to the direction of the Secretary of the Treasury. The United States Mint is responsible for providing the necessary support services for the Committee. Committee members are not paid for their time or services, but consistent with Federal travel regulations, members are reimbursed for their travel and lodging expenses to attend approximately two meetings each year. Members may be subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2653).

The United States Mint will review all submissions and will forward its recommendations to the Secretary of the Treasury for appointment consideration. Candidates who believe that they are specially qualified to serve by reason of their education, training, or experience in the fields of art, art history, museum or numismatic collection curation, or numismatics should include specific skills, abilities, talents, and credentials to support their applications. All candidates should submit any relevant information that demonstrates their qualifications to represent the interests of the public, including demonstrated experience with history, education, youth or American heritage and culture. The United States Mint is also interested in candidates who have demonstrated leadership skills, who have received recognition by their peers in their field of interest, who have a record of participation in public service or activities, and who are willing to commit the time and effort to participate in the Committee meetings and related activities.

Application Deadline: December 2, 2002.

Receipt of Applications: Any member of the public wishing to be considered for participation on the committee should submit a resume or letter describing qualifications for membership, by e-mail to *cccacmembership@usmint.treas.gov* or by mail to the United States Mint, 801 9th Street, NW., Washington, DC 20001, Attn: CCCAC Membership. Submissions must be postmarked no later than December 2, 2002. Applications submitted previously in 2002 have been retained on file and will be reviewed and considered along with new applicants—it is not necessary to reapply.

Dated: November 7, 2002.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 02–28867 Filed 11–13–02; 8:45 am]

BILLING CODE 4810–37–P

Corrections

Federal Register

Vol. 67, No. 220

Thursday, November 14, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–36–000, CP01–382–000, CP01–52–000 and CP01–383–000

Zia Natural Gas Company, an Operating Division of Natural Gas Processing Company v. Raton Gas Transmission Compnay [Not Consolidated]; Notice of Technical Conference

October 24, 2002.

Correction

In notice document 02–27921 appearing on page 67162 in the issue of Monday, November 4, 2002 make the following correction:

On page 67162, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C2–27921 Filed 11–13–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
November 14, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 18

Florida Manatees; Incidental Take During Specified Activities; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AH86

Florida Manatees; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability.

SUMMARY: We, the Fish and Wildlife Service, are proposing regulations that would authorize for the next five years the incidental, unintentional take of small numbers of Florida manatees (*Trichechus manatus latirostris*) resulting from government activities related to watercraft and watercraft access facilities within three regions of Florida.

Under the provisions of the Marine Mammal Protection Act (MMPA), the Secretary of the Department of the Interior may authorize the incidental taking of small numbers of marine mammals in a specified geographic area if the Secretary finds, based on the best scientific evidence available, that the total taking for the authorized period will have no more than a negligible impact on the species or stock. If this finding is made, specific regulations will be established for the activities that describe permissible methods of taking; means of effecting the least practicable adverse impact on the species and its habitat; and requirements for monitoring and reporting. If the Secretary cannot make a finding that the total taking will have a negligible impact on the species or stock, the Secretary must publish the negative finding in the **Federal Register** along with the basis for such determination.

We have defined the specified geographic area for this proposed rule to be the species' range within the State of Florida. Long-term studies suggest four regional populations of manatees in Florida—Northwest, Upper St. Johns River (from Palatka south), Atlantic (including the St. Johns River north of Palatka), and Southwest. Through this rule, we have defined these populations as stocks. We are proposing a finding that the total expected takings of Florida manatee resulting from government activities related to watercraft and watercraft access facilities would have a negligible impact in the Upper St. Johns River and Northwest stocks and a negligible impact with the implementation of additional mitigating measures on the Atlantic Stock. For the Southwest Stock, the best available information indicates that these activities would have more than a negligible impact on the Stock and, therefore, we are not proposing to authorize incidental take for this Stock (*i.e.*, a negative finding). We also announce the availability of a draft environmental impact statement for this action.

DATES: We will consider comments on both the proposed rule and the draft environmental impact statement that are received by January 13, 2003.

We will hold six public hearings as follows: on December 2, 2002, in Ft. Myers; on December 3, 2002, in Tampa; on December 4, 2002, in Melbourne; on December 5, 2002, in Daytona Beach; on December 9, 2002, in Palatka; and on December 10, 2002, in Gainesville. All hearings will run from 6 p.m. to 9 p.m. We will hold additional public hearings if requested.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Chuck Underwood of the Jacksonville Field Office (see **ADDRESSES** section) as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing.

ADDRESSES: If you wish to comment, you may submit your comments by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216.

2. You may hand deliver written comments to our Jacksonville Field Office, at the above address, or fax your comments to 904/232–2404.

3. You may send comments by electronic mail (e-mail) to *manatee@fws.gov*. For directions on how to submit electronic comment files, see the ''Public Comments Solicited'' section.

We request that you identify whether you are commenting on the proposed rule or draft environmental impact statement. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m. Monday through Friday, at the above address. You may obtain copies of the draft environmental impact statement from the above address or by calling 904/232–2580, or from our Web site at *http://northflorida.fws.gov.* Information regarding this proposal is available in alternative formats upon request.

The public hearings will be held at the following locations:

1. Harborside Convention Hall, 1375 Monroe St., Ft. Myers;

2. Holiday Inn & Conference Center, 4732 N. Dale Mabry Hwy, Tampa;

3. Radisson Hotel & Conference Center, 3101 N. Highway A1A, Melbourne;

4. Daytona Beach Resort & Conference Center, 2700 N. Atlantic Ave., Daytona Beach;

5. Holiday Inn, 201 N. 1st St., Palatka; and,

6. Doubletree University Florida Hotel & Conference Center, 1714 SW 34th St., Gainesville.

FOR FURTHER INFORMATION CONTACT: Pete Benjamin, Assistant Field Supervisor (see **ADDRESSES** section), telephone 904/232–2580; or visit our Web site at *http://northflorida.fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361–1407) sets a general moratorium, with certain exceptions, on the taking and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. ''Take'' as defined by the MMPA and its implementing regulations (50 CFR part 18) means ''to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following—the collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal.''

''Harassment'' is defined under the MMPA as, ''any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.''

The prohibitions on take apply to all persons, including Federal, State, and local government agencies with the

exception of humane taking (including euthanasia) by government officials while engaged in their official duties, if such taking is (1) for the protection or welfare of a marine mammal; (2) for the protection of the public health and welfare; or (3) the non-lethal removal of nuisance animals. When feasible, steps designed to ensure return of such animals to their natural habitat, if not killed in the course of such taking, must be implemented (16 U.S.C. 1379(h)).

Section 101(a)(5)(A) of the MMPA allows the Secretary of the Department of the Interior, through the Director of the Fish and Wildlife Service (Service), upon request, to authorize by specific regulation the incidental, unintentional take of a small number of marine mammals by U.S. citizens engaged in specific identified activities (other than commercial fishing) within specific geographic areas. This is the mechanism by which incidental, but not intentional, take of small numbers of marine mammals may be authorized in accordance with Federal law for activities other than commercial fishing if certain findings are made and regulations are enacted pursuant to 50 CFR 18.27. The Director must find that the total of such taking during the specified time period (which cannot be more than five consecutive years) will have no more than a negligible impact on the species or stock and will not have an unmitigable impact on the availability of such species or stock for subsistence uses. The subsistence provision is not applicable to Florida manatees.

The regulations implementing the MMPA define ''negligible impact'' as, ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 18.27(c)). If such findings are made, we would then establish specific regulations identifying permissible methods of taking by such activity, means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements for monitoring and reporting such taking. If a finding cannot be made that the total taking will have a negligible impact on the species or stock, the ''negative finding'' and the basis for denying the request for the incidental take must be published in the **Federal Register** (50 CFR 18.27(d)(4)).

Following issuance of incidental take regulations, U.S. citizens (including government agencies) who engage in the specified activities in the specified area could apply for a Letter of Authorization (LOA), which, if granted, would authorize incidental take associated with the applicant's activities. In return for committing to specific measures that minimize the applicant's impact on the species or stock and ensure that the total taking remains at the negligible level, the applicant receives authorization for any remaining take that occurs and that would otherwise be unlawful under the MMPA. General procedures for obtaining an LOA are described at 50 CFR 18.27(f).

Summary of Request

The Florida Manatee Recovery Plan, Third Revision (U.S. Fish and Wildlife Service 2001), states that the largest known human-related cause of manatee deaths is collisions with watercraft. Between 1976 and 2000, the total number of carcasses (*i.e.*, deaths due to all causes) collected has increased at a rate of 6.0 percent per year. Between 1976 and 2002 deaths attributed to watercraft increased by 7.3 percent per year (Florida Marine Research Institute 2002). In 2000 and 2001, watercraft-related deaths accounted for at least 29 percent and 25 percent, respectively, of the total number of known manatee deaths. During the past five years (1997 to 2001) watercraft-related deaths have been the highest on record ranging from 52 to 82 per year.

In the State of Florida, government agencies (including Federal, State, and local agencies) engage in a variety of activities related to watercraft that may affect manatees, positively or negatively. Many of these activities relate to the use and regulation of watercraft operated in Florida waters accessible to manatees, including—(1) regulating watercraft operation (*e.g.*, regulation of marine events); (2) authorizing construction of watercraft access facilities (marinas, docks, boat ramps, etc.); (3) funding construction of watercraft access facilities; (4) operating watercraft access facilities; and (5) operating watercraft. To date, there are no regulations under the MMPA to authorize the incidental, unintentional death, injury, or harassment of manatees caused by these otherwise legal activities.

We, the U.S. Fish and Wildlife Service, engage in, or have the authority to engage in, each of the above five categories of activities; therefore, our activities could result in the incidental, unintentional take of manatees. As such, we initiated the development of incidental take regulations for our own activities related to watercraft in Florida. Other Federal agencies also engage in some or all of these activities, as do a variety of State and local agencies. We have encouraged other Federal and State agencies involved in these same types of activities to join us in our rulemaking process as a means to coordinate Federal, State, and local measures that would reduce the taking of manatees by watercraft; develop additional protective measures; and insulate partner agencies against liability for take through the authorization process. The U.S. Coast Guard, National Park Service, and U.S. Army Corps of Engineers have agreed to join us in this rulemaking process.

Specified Activities

Only activities of government agencies related to watercraft and watercraft access facilities are considered within the scope of this rule. While it is our view that the operation of watercraft is the most important factor influencing watercraft/manatee interactions (see ''Watercraft-Related Impacts to the Florida Manatee'' section below), virtually all aspects of watercraft operation and access are regulated by Federal, State, and/or local government agencies. As such, those government agencies who hold a Letter of Authorization will have protection from liability for take associated with these activities. Liability protection afforded under these regulations would also extend to individual non-governmental operators of watercraft and watercraft access facilities who are authorized or regulated by a Federal, State, or local government agency holding a Letter of Authorization, provided (1) the government authorization or regulation is implemented in accordance with the Letter of Authorization; and (2) the individual is in compliance with the terms of the agency authorization or regulation. For example, by issuing a Letter of Authorization to an agency that permits the construction of watercraft access facilities, entities receiving such permits would be covered under the agency's Letter of Authorization.

The following five categories of activities were considered in the scope of this rulemaking evaluation as watercraft-related activities of government agencies that could cause the incidental take of manatees, including mortality, injury, and harassment. Activities of government agencies that have the potential to reduce watercraft-related take of manatees are described below under ''Mitigating Measures.''

1. *Regulating the operation of watercraft on Florida waters*—This category of activity includes government programs responsible for the establishment of watercraft speed zones and restricted access areas. Local, State,

and Federal agencies establish speed zones and restricted access areas in order to reduce watercraft-related take of manatees by slowing watercraft speeds or prohibiting waterborne activities in areas of importance to manatees such as aggregation areas, travel corridors, feeding areas, resting areas, calving areas, and other areas where manatees occur. The establishment of such areas does not cause or contribute to take. However, to the extent that agencies exempt, except, permit, or otherwise allow prohibited activities to occur in such areas, such authorization may cause or contribute to the incidental take of manatees.

This category also includes government programs (*e.g.*, State/local registration, U.S. Coast Guard vessel documentation) that register watercraft for operation in waters inhabited by manatees. This activity may cause or contribute to incidental take of manatees to the extent that watercraft which are not properly registered are not authorized to operate on Florida waters. Finally, this category includes the authorization and regulation of marine events (*e.g.*, high-speed races, parades, etc.) in Florida waters inhabited by manatees. Such events, particularly events that involve high-speed watercraft operation, have the potential to cause or contribute to the incidental take of manatees.

2. *Authorizing construction of watercraft access facilities (e.g., boat ramps, docks, and marinas) that provide watercraft access to waters inhabited by manatees*—This category of activity includes government programs that regulate the location and construction of watercraft access facilities including boat ramps, marinas, private and public docks, and other such structures that provide watercraft access to waters inhabited by manatees. Construction of watercraft access facilities is authorized by local, State, and Federal agencies. At the local level, construction of watercraft access facilities is regulated primarily through zoning ordinances. Several Florida counties have adopted Manatee Protection Plans (MPP) which include facility siting plans. Facility siting plans generally identify areas within a county where construction of additional watercraft access facilities are encouraged or discouraged, or define criteria for assessing the suitability of sites for construction of new facilities. County MPPs must be approved by the Florida Fish and Wildlife Conservation Commission (FWC). Upon approval, the facility siting plans must be incorporated into the County's comprehensive plan.

At the State level, construction of watercraft access facilities is regulated by the Florida Department of Environmental Protection and the water management districts pursuant to the State's Environmental Resource Permit Procedures (62–343 Florida Administrative Code [F.A.C.]). Permit applications received by the State regulatory agencies are also reviewed by the FWC, Bureau of Protected Species Management (BPSM), which uses the FWC Manatee Environmental Resource Permit Coordination Guidance, and provides an environmental assessment of potential adverse impacts to manatees from regulated activities.

At the Federal level, construction of watercraft access facilities is regulated by the Army Corps of Engineers (Corps) through section 404 of the Clean Water Act of 1972 and section 10 of the Rivers and Harbors Act of 1899. Section 7 of the Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531 *et seq.*), as amended, requires the Corps to assess the effects of any facility under their review on federally listed species and consult with us or the National Marine Fisheries Service (NOAA-Fisheries), as appropriate, if they determine that the facility in question may affect listed species or their designated critical habitat. The Corps utilizes a decision-making key developed in cooperation with us to assist in determining whether a proposed project may affect manatees. If potential adverse effects to manatees or manatee habitat are identified, the permit can be specifically conditioned to avoid the adverse impacts, or where appropriate, denied. Typical permit conditions include limitations on the number of slips, and avoidance or minimization of impacts to sea grasses. Additionally, standard manatee construction conditions have been developed that are utilized by the Corps as well as State regulatory agencies to minimize the effects of watercraft access facilities on manatees and manatee habitat.

3. *Funding construction of watercraft access facilities that provides watercraft access to waters inhabited by manatees*—In addition to authorizing construction of watercraft access facilities, many local, State, and Federal agencies fund their construction. The effects of funding construction of watercraft access facilities are the same as those described for permitting construction of watercraft access facilities.

4. *Operating facilities that provide watercraft access to waters inhabited by manatees*—Many government agencies operate watercraft access facilities. Operation includes any act of owning, maintaining, or directly or indirectly controlling who has access to waters inhabited by manatees through use of any watercraft access facility.

5. *Operating government-owned watercraft in Florida waters accessible to manatees for official government business other than that covered under section 109(h) of the MMPA*—Many government agencies own and operate watercraft. Incidental take directly related to the protection of manatees is covered under the exemption provided under section 109(h) of the MMPA. Other government watercraft activities require authorization under the MMPA like that of private watercraft operators.

Other human activities cause the incidental take of manatees including, but not limited to, the operation of locks and water control structures, port operations, naval and other military activities, the operation of industrial warm-water outfalls, commercial and recreational fisheries, implementation of projects that affect the quality and quantity of water flow from warm water springs, and the implementation of water manipulation projects that affect the distribution, timing, quality, and quantity of waterflow in manatee habitat. These activities are outside of the scope considered in this evaluation, but may be subject to the future publication of rules.

Specified Geographic Region

While the summer range of the Florida manatee extends beyond Florida, the entire natural winter range is within Florida where the majority of watercraft-related incidental take occurs. The effective control of watercraft-related incidental take depends on actions of the operators of watercraft and government agencies in Florida. Therefore, the specific geographic area considered for coverage by this regulation was limited to those waters within the State of Florida that are accessible to manatees. Separate regulations for government activities in other geographic areas outside of the State of Florida may be considered under subsequent rulemakings, if requested.

Long-term studies suggest four regional populations of manatees in Florida—(a) the Northwest Region, consisting of the counties along the Gulf of Mexico from Escambia County east and south to Hernando, Lafayette, and Gilchrist counties, and Marion County adjacent to the Withlacoochee River; (b) the Upper St. Johns River Region, consisting of Putnam County from Palatka south, Volusia, Flagler, and Marion counties adjacent to the St. Johns River or its tributaries, and Lake

and Seminole counties; (c) the Atlantic Region, consisting of counties along the Atlantic coast from Nassau County south to Miami-Dade County, the portion of Monroe County adjacent to the Florida Bay and the Florida Keys, Okeechobee County, and counties along the lower portion of the St. Johns River north of Palatka, which includes Putnam, St. Johns, Clay, and Duval counties; and (d) the Southwest Region, consisting of the counties along the Gulf of Mexico from Pasco County south to Whitewater Bay in Monroe County and DeSoto, Glades, and Hendry counties.

These divisions are based primarily on documented manatee use of wintering sites and from radio-tracking studies of individuals' movements. Radio-tracking studies (Bengtson 1981) and other information (U.S. Fish and Wildlife Service 2001, Marine Mammal Commission [MMC] 1988) suggest that most manatees wintering at Blue Spring tend to remain in the area identified as the Upper St. Johns River Region. The manatees of this region comprise approximately four percent of the total Florida manatee population. The lower St. Johns River, the Atlantic coast, and the Florida Keys are considered to represent the Atlantic Region, based on the results of long-term radio tracking and photo-identification studies (Beck and Reid 1995, Reid *et al.* 1995, Deutsch *et al.* 1998). The manatees of this region comprise approximately 42 percent of the total Florida manatee population.

On the west coast, Rathbun *et al.* (1995) reported that, of 269 recognizable manatees identified at the Kings Bay and Homosassa River warm-water refuges in northwest Florida between 1978 and 1991, 93 percent of the females and 87 percent of the males returned to the same refuge each year. Radio-tracking results suggest that many animals wintering at Crystal River disperse north in warm seasons to rivers along the Big Bend coast, particularly the Suwannee River (Rathbun *et al.* 1990). The manatees of this region comprise approximately 12 percent of the total Florida manatee population. The existence of more or less distinct subgroups in the southwestern area of Florida (*i.e.*, from Tampa Bay south) is not clear. It is possible that manatees using warm-water refuges in Tampa Bay, the Caloosahatchee River, and Collier County may be somewhat discrete groups; however, the best available data before us and the Florida Manatee Recovery Team indicated that we should identify them as one group. The manatees of this region comprise approximately 42 percent of the total Florida manatee population.

Although some movement occurs among regional populations, researchers found that analysis of manatee status on a regional level provided significant insights into important factors related to manatee recovery, such as winter aggregation areas, manatee movement patterns, and human interactions (U.S. Fish and Wildlife Service 2001). This led the Florida Manatee Recovery Team and the Service to establish objective and measurable recovery criteria for the four regions based upon demographic benchmarks for certain aspects of manatee life history—adult survival, reproduction, and population growth—in the Florida Manatee Recovery Plan.

Based on available information, we have concluded that these regions meet the criteria for classification as separate stocks under the MMPA. The guidelines for assessing marine mammal stocks (Barlow *et al.* 1995) advise a risk-averse strategy when determining stock structure. The guidelines advise that this requires starting with a definition of stocks based on the smallest groupings that are biologically reasonable and are practical from a management perspective. Biological evidence indicates considerable demographic differences among the four regions. For example, based on recent analysis (Langtimm *et al.* 2002) estimates of adult survival rates vary among regions; ranging from a high of 96.2 (95 percent confidence interval (CI) that ranges from 95.3 to 97.2) in the Northwest Region to a low of 90.6 (95 percent CI 86.7 to 94.4) in the Southwest Region. Adult survival in the Atlantic Region is estimated to be 94.3 percent (95 percent CI 92.3 to 96.2), and adult survival in the Upper St. Johns River Region is 96.1 (95 percent CI 90.0 to 98.5). Similarly, estimates of population growth rates vary among regions. According to a recent analysis by Runge *et al.* (2002 unpubl. analysis), the growth rate is estimated to be highest in the Upper St. Johns River Region at 6.1 percent per year (95 percent CI 1.7 to 8.7), followed by the Northwest Region (5.0 percent growth per year; 95 percent CI 3.2 to 6.8), and the Atlantic Region (3.2 percent growth per year; 95 percent CI 0.3 to 5.7). Growth rate has not been calculated for the Southwest Region, although it is thought that the population is declining or is, at best, stable.

As noted above, available evidence indicates that there is relatively little movement of manatees among the regions. The highest dispersal rate assumed by the FWC for the purposes of their recent population viability analysis (PVA) (see ''The Status of the Florida Manatee'' section) was two percent per year between the Upper St. Johns River Region and the Atlantic Region (Florida Marine Research Institute 2002). The FWC assumed that dispersal rates among the other regions did not exceed 0.5 percent per year. This indicates that dispersal from regions in which the population is likely growing (*e.g.*, the Northwest Region) is likely not sufficient to compensate for high levels of human-related mortality in other regions (*e.g.*, the Southwest Region). The stock assessment guidelines warn that managing areas with differential levels of take as a single stock can lead to depletion (Wade and Angliss 1997).

The threats facing manatees also vary among regions. For example, the number of watercraft-related deaths has been reported (U.S. Fish and Wildlife Service 2001) as increasing at a rate of 10.8 percent per year in the Northwest Region between 1980 and 1999; although the number of manatees killed by watercraft in this region over that period was low (N=32). Conversely, watercraft-related deaths in the Southwest Region increased at a rate of 7.1 percent per year during the same period, and a far greater number of manatees were killed (N=331). The disproportionate amounts of incidental take in the Southwest and Atlantic regions supports the definition of separate stocks. Additionally, manatees in the Southwest Region are more vulnerable to red tide than in other regions, and manatees in the Atlantic and Southwest regions are more dependent on man-made warm water sources than are manatees in the Upper St. Johns River and Northwest regions (U.S. Fish and Wildlife Service 2001). Addressing these threats necessitates application of different management approaches in each region. This further supports the definition of these as separate stocks.

Based on the preceding analysis, we conclude that the four regions identified in the Florida Manatee Recovery Plan meet the criteria for designation as separate stocks under the MMPA. We intend to use this determination in the next revision of the Stock Assessment Report for the West Indian Manatee, and for the remainder of this document we will refer to the regions as the Northwest Stock, Upper St. Johns River Stock, Atlantic Stock, and Southwest Stock. Ideally, we would have preferred to review and revise the Stock Assessment Report prior to this rulemaking; however, settlement obligations precluded our ability to do this.

We have determined that these stocks, under the MMPA, do not meet the criteria for designation as Discrete

Population Segments pursuant to the ESA, and as such it would not be possible or appropriate for us to consider reclassification of the stocks separately under the ESA.

Summary of Proposed Rule

We are proposing regulations to allow the incidental, unintentional take of Florida manatee within the Northwest, Upper St. Johns River, and Atlantic stocks in Florida. The regulations would be in effect year-round from the date of enactment for a period of five years for government activities related to the operation of watercraft and watercraft access facilities. The proposed regulations would not authorize the intentional harassment, hunting, capturing, or killing of Florida manatee. These regulations do not permit the actual activities associated with use and regulation of watercraft and watercraft access facilities in Florida waters, but rather allow the incidental, unintentional take of the Florida manatee resulting from these otherwise lawful activities. We are not proposing to authorize incidental take of manatees from the Southwest Stock at this time. However, we will continue to monitor the status of the Southwest Stock, and will propose incidental take regulations as soon as available information indicates that watercraft-related incidental take in this region is having no more than a negligible impact on the Southwest Stock, or could be reduced to the negligible impact level with implementation of mitigating measures.

The proposed regulations include requirements for monitoring and reporting, and measures to reduce adverse impacts on the Florida manatee and its habitat to the maximum extent practicable. The regulations are based on the finding that the authorization and regulation of watercraft and watercraft access facilities in Florida may result in the taking of Florida manatee. We find that with the continued and/or additional implementation of the mitigating measures described in this proposed rule, the total impact of the takings in three of the four stocks will have a negligible impact on these stocks.

After establishing these regulations, in order to implement the regulations and for a person or agency to receive the protections offered by the MMPA, government agencies that engage in the specified activities would need to apply for and obtain an LOA. The process for requesting an LOA is described in the ''Proposed LOA Process'' section of this proposed rule.

The Status of the Florida Manatee

In the southeastern United States, manatees occur primarily in Florida and southeastern Georgia, but individuals can range as far north as Rhode Island on the Atlantic coast (U.S. Fish and Wildlife Service 2001), and as far west as Texas on the Gulf coast. During the winter, cold temperatures keep the population concentrated in peninsular Florida and many manatees rely on the warm water from natural springs and power plant outfalls. We have divided this population into four stocks as explained above.

Research in the early 1980s indicated to scientists that development of a means of estimating or monitoring trends in the size of the overall manatee population in the southeastern United States would be difficult (O'Shea 1988, O'Shea *et al.* 1992, Lefebvre *et al.* 1995). Even though many manatees aggregate at warm-water refuges in winter and most if not all such refuges are known, direct counting methods (*i.e.*, by aerial and ground surveys) have been unable to account for the number of animals that may be away from these refuges, are not seen because of turbid water, or for other factors. The use of mark-resighting techniques to estimate manatee population size based on known animals in the manatee photo-identification database also has been impractical, as the proportion of unmarked manatees has not been estimated.

The only data on population size have been uncalibrated indices based on maximum counts of animals at winter refuges made within one or two days of each other. Based on such information in the late 1980s, the total number of manatees throughout Florida was indicated to be at least 1,200 animals (U.S. Fish and Wildlife Service 2001). Because aerial and ground counts at winter refuges are variable because of the weather, water clarity, manatee behavior, and other factors (Packard *et al.* 1985, Lefebvre *et al.* 1995), interpretation of analyses for short-lived trends is difficult (Packard and Mulholland 1983, Garrott *et al.* 1994). Strip-transect aerial surveys are used routinely to estimate dugong (*Dugong dugon*) population size and trends (U.S. Fish and Wildlife Service 2001); however, these surveys do not adapt to manatees because of their more linear (*i.e.*, coastal and riverine) distribution. This survey method was tested in the Banana River, Brevard County, and recommended for use in that area to monitor manatee population trends (Miller *et al.* 1998). This approach may also have utility in the Ten Thousand Islands-Everglades area, where manatee population size and distribution is poorly understood.

Beginning in 1991, the former Florida Department of Natural Resources (FDNR) initiated a statewide aerial survey program to count manatees in potential winter habitat during periods of severe cold weather (Ackerman 1995). These surveys are more comprehensive than those used to estimate a minimum population during the 1980s. The highest two-day minimum count of manatees from these winter synoptic aerial surveys and ground counts is 3,276 manatees in January 2001; the highest count on the east coast of Florida is 1,756, and the highest on the west coast is 1,520, both in 2001. However, the manatee counts of March 2002, when weather conditions were less favorable, resulted in a total count of 1,796. The FWC stated in their March 6, 2002, press release that the ''low count merely reflects the poor visibility during the count, not a dramatic change in the manatee population.'' Due to the nearly ideal conditions for the 2001 synoptic survey, the results of that survey are considered the best available estimate of the current minimum population size (*i.e.*, 3,276).

It remains unknown what proportions of the total manatee population were counted in these surveys. No statewide surveys were done during the winters of 1992–93 or 1993–94 because of the lack of strong mid-winter cold fronts. These uncorrected counts do not provide a basis for assessing population trends. However, trend analyses of temperature-adjusted aerial survey counts show promise for providing insight to general patterns of population growth in some regions (Garrott *et al.* 1994, 1995, Craig *et al.* 1997, Eberhardt *et al.* 1999).

It has been possible to monitor the number of manatees using the Blue Spring and Crystal River warm-water refuges. At Blue Spring, with its unique combination of clear water and a confined spring area, it has been possible to count the number of resident animals by identifying individual manatees from scar patterns. The data indicate that this group of animals has increased steadily since the early 1970s when it was first studied. During the 1970s the number of manatees using the spring increased from 11 to 25 (Bengtson 1981). In the mid-1980s about 50 manatees used the spring (U.S. Fish and Wildlife Service 2001), and by the winter of 1999–2000, the number had increased to 147 (Hartley 2001).

On the northwest coast of Florida, the clear, shallow waters of Kings Bay have made it possible to monitor the number

of manatees using the warm-water refuge in Kings Bay at the head of the Crystal River. Large aggregations of manatees apparently did not exist there until recent times (U.S. Fish and Wildlife Service 2001). The first counts were made in the late 1960s, when 38 animals were counted in King Bay during the winter of 1967/1968 (Hartman 1979). By the winter of 1981/1982, the maximum winter count had increased to 114 manatees (Powell and Rathbun 1984), and in December 1997, the maximum count was 284 (Buckingham *et al.* 1999). Both births and immigration of animals from other areas have contributed to the increases in manatee numbers at Crystal River and Blue Spring. The increases in counts at Blue Spring and Crystal River are accompanied by estimates of adult survival and population growth that are higher than those determined for the Atlantic coast (Eberhardt and O'Shea 1995, Langtimm *et al.* 1998, Eberhardt *et al.* 1999).

While aircraft synoptic surveys provide a ''best estimate'' of the minimum manatee population size, there are no estimates or confidence intervals for the size of the Florida manatee population that have been derived by reliable, statistically based, population-estimation techniques. A *census* is a complete count of individuals within a specified area and time period. A *survey*, in contrast, is an incomplete count. With the exception of a few places where manatees may aggregate in clear, shallow water, not all manatees can be seen from aircraft because of water turbidity, depth, surface conditions, variable times spent submerged, and other considerations. Thus, results obtained during typical manatee synoptic surveys yield partial counts. While these results are of value in providing information on where manatees occur, likely relative abundance in various areas, and seasonal shifts in manatee abundance, they do not provide good population estimates, nor can they reliably measure trends in the manatee population. Consequently, the Florida Manatee Recovery Plan concludes—''Despite considerable effort in the early 1980s, scientists have been unable to develop a useful means of estimating or monitoring trends in size of the overall manatee populations in the southeastern United States'' (U.S. Fish and Wildlife Service 2001).

Population models employ mathematical relationships based on survival and reproduction rates to calculate population growth and trends in growth. A deterministic model (a model in which there are no random events) using classical mathematical approaches and various computational procedures with data on reproduction and survival of living, identifiable manatees suggests a maximum growth rate of about seven percent per year, excluding emigration or immigration (Eberhardt and O'Shea 1995). This maximum was based on studies conducted between the late 1970s and early 1990s in the protected winter aggregation area at Crystal River and did not require estimates of population size. The analysis showed that the chief factor affecting the potential for population growth is survival of adults.

Estimated adult survival in the Atlantic Region has suggested a slower rate or no population growth over a similar period, compared to the Upper St. Johns River and Northwest regions. This modeling shows the value of using survival and reproduction data obtained from photo-identification studies of living manatees to compute population growth rates with confidence intervals, providing information which can be used to infer long-term trends in the absence of reliable population size estimates. However, collection of similar data has been initiated only recently for other areas of Florida (notably from Tampa Bay to the Caloosahatchee River beginning in the mid-1990s), and none is available over much of the remaining areas used by manatees in southwestern Florida.

A PVA is a stochastic modeling approach (*i.e.*, a model in which random events, such as red tide and extremely cold winters, are incorporated), which varies potential scenarios influencing reproduction and survival over long periods, and predicts responses in population growth. A PVA was carried out for manatees based on age-specific mortality rates computed from the age distribution of manatees found dead throughout Florida from 1979 through 1992 (Marmontel *et al.* 1997). This method of computing survival rests on certain assumptions that were not fully testable; yet, results point out the importance of adult survival to population persistence.

Given population sizes that may reflect current abundance, the PVA showed that if adult mortality as estimated for the study period were reduced by a modest amount (*e.g.*, from 11 percent down to nine percent), the Florida manatee population would likely remain viable for many years. However, the PVA also showed that slight increases in adult mortality would result in extinction of manatees over the long term.

The above review demonstrates that the basis for statewide population size ''estimates'' of any kind, based on current survey methods, cannot be used for computing population trends in manatees. The weight of scientific evidence suggests that the potential for population increases over the last two decades is strong for two protected aggregation areas. New population analyses, based on more recent (since 1992) information, are not yet available in the peer-reviewed literature. These analyses will be fundamental to management decisions that are more relevant today.

The most significant problem presently faced by manatees in Florida is death or serious injury from boat strikes. An additional long-term threat is the lack of availability of warm-water refuges. The availability of warm-water refuges for manatees is uncertain if minimum flows and levels are not established for the natural springs on which many manatees depend, and if industrial warm-water refuges are lost as deregulation of the power industry in Florida occurs. Consequences of an increasing human population and intensive coastal development are also long-term threats to the Florida manatee. Survival of the manatee will depend on maintaining the integrity of the ecosystem and habitat sufficient to support a viable manatee population.

Data on manatee deaths in the southeastern United States have been collected since 1974 (O'Shea *et al.* 1985, Ackerman *et al.* 1995, FWC unpubl. data). Data since 1976 were used in the following summary, as carcass collection efforts were more consistent following that year. They indicate a clear increase in manatee deaths over the last 25 years (6.0 percent per year exponential regression between 1976 and 2000; U.S. Fish and Wildlife Service 2001). Most of the increase can be attributed to increases in watercraft-related and perinatal deaths (Marine Mammal Commission 1993). Between 1976 and 2002, watercraft-related deaths increased at an average of 7.3 percent per year (Florida Marine Research Institute 2002). However, it is unclear whether this represents an increase in the overall mortality rate or a proportional increase relative to the overall population of manatees. The reported rate of increase in manatee mortality, and watercraft-related mortality in particular, is greater than the likely rate of population increase reported by Runge *et al.* (2002).

Natural causes of death include disease, parasitism, reproductive complications, and other non-human-related injuries, as well as occasional exposure to cold and red tide (O'Shea *et al.* 1985, Ackerman *et al.* 1995). These

natural causes of death accounted for 17 percent of all deaths between 1976 and 2000 (FWC, unpublished data). Perinatal deaths accounted for 21 percent of all deaths in the same period. Human-related causes of death include watercraft collisions, manatees crushed in water control structures and navigational locks, and a variety of less-common causes. Human-related causes of death accounted for at least 31 percent of deaths between 1976 and 2000. Cause of death of some individuals could not be determined because of advanced decomposition, the cause was forensically undeterminable, or the carcass was not recovered. These carcasses were classified as undetermined, and accounted for 30 percent of deaths between 1976 and 2000.

A natural cause of death in some years is exposure to cold. Following a severe winter cold spell at the end of 1989, at least 46 manatee carcasses were recovered in 1990; the cause of death for each was attributed to cold stress. Exposure to cold is believed to have caused many deaths in the winters of 1977, 1981, 1984, 1990, and 2001 and has been documented as early as the 19th century (Ackerman *et al.* 1995, O'Shea *et al.* 1985, FWC, unpubl. data).

In 1982, a large number of manatees also died during an outbreak of the red tide dinoflagellate (*Gymnodinium breve*) between February and March in Lee County, Florida (O'Shea *et al.* 1991). At least 37 manatees died, perhaps in part due to incidental ingestion of filter-feeding tunicates that had accumulated the neurotoxin-producing dinoflagellates responsible for causing red tide. In 1996, from March to May, at least 145 manatees died in a red tide outbreak over a larger area of southwest Florida (Bossart *et al.* 1998, Landsberg and Steidinger 1998). Although the exact mechanism of manatee exposure to the red tide brevetoxin is unknown in the 1982 and 1996 outbreaks, ingestion, inhalation, or both are suspected (Bossart *et al.* 1998). The critical circumstances contributing to high red tide-related deaths are concentration and distribution of the red tide, timing and scale of manatee aggregations, salinity, and timing and persistence of the bloom (Landsberg and Steidinger 1998). It is difficult to manage for these rare but catastrophic causes of mortality.

Perinatal deaths are carcasses of manatees less than 59 inches long (O'Shea *et al.* 1995). Some are aborted fetuses; others are stillborn or die of natural causes within a few days of birth. Some may die from disease, reproductive complications, and/or congenital abnormalities. The cause of many perinatal deaths is difficult to determine, because these carcasses are generally in an advanced state of decomposition at the time they are retrieved. Most perinatal deaths appear to be due to natural causes; however, watercraft-related injuries or disturbance, or other human-related factors affecting pregnant and nursing mothers also may be responsible for a significant number of perinatal deaths. It has also been suggested that some may die from harassment by adult male manatees (O'Shea and Hartley 1995). Between 1976 and 1999, perinatal deaths increased at an average of 8.8 percent per year, increasing from 14 percent of all deaths between 1976 and 1980, to 22 percent between 1992 and 2000 (Ackerman *et al.* 1995, FWC unpubl. data).

The largest known cause of human-related manatee deaths is collisions with watercraft. The next largest human-related cause of deaths is entrapment or crushing in water control structures and navigational locks, which accounted for four percent of total mortality between 1976 and 2000 (Ackerman *et al.* 1995, FWC unpubl. data). These deaths were first recognized in the 1970s (Odell and Reynolds 1979), and steps have been taken to eliminate this source of death. Other known causes of human-related manatee deaths include poaching and vandalism, entanglement in shrimp nets and monofilament line (and other fishing gear), entrapment in culverts and pipes, and ingestion of debris. These accounted for three percent of the total mortality from 1976 to 2000.

In 2001, the Manatee Population Status Working Group (MPSWG) provided a statement summarizing what they believed to be the status of the Florida manatee at that time (U.S. Fish and Wildlife Service 2001). The MPSWG stated, that for the Northwest and Upper St. Johns River regions, available evidence indicated that there had been a steady increase in animals over the last 25 years. Such growth was consistent with the conditions of these regions—low numbers of human-related deaths, high estimates of adult survival, and good habitat. The statement was less optimistic for the Atlantic Region due to an adult survival rate that was lower than the rate necessary to sustain population growth. The MPSWG believed that this region had likely been growing slowly in the 1980s but may then have leveled off or even possibly declined. They considered the status of the Atlantic Region to be ''too close to call.'' This finding was consistent with high levels of human-related and, in some years, cold-related deaths in this region. Regarding the Southwest Region, the MPSWG acknowledged that further data collection and analysis would be necessary to provide an assessment of the manatee's status in this region. Preliminary estimates of adult survival available to the MPSWG at that time indicated that the Southwest Region was similar to the Atlantic Region and ''substantially lower than [the adult survival estimates] for the Northwest and Upper St. Johns Regions.'' The Southwest Region was cited as having had high levels of watercraft-related deaths and injuries and natural mortality events (*i.e.*, red tide and severe cold).

Since the above-mentioned assessment by the MPSWG, additional information and analyses have become available. Based on the data provided at the April 2002 Manatee Population Ecology and Management Workshop, we now believe that the Northwest and Upper St. Johns River stocks continue to do well and that these stocks are approaching the demographic benchmarks established in the Florida Manatee Recovery Plan for downlisting and delisting under the ESA. Furthermore, we believe that the Atlantic Stock may be close to meeting the ESA downlisting benchmark for adult survival, at a minimum, and is likely close to meeting or exceeding the other benchmarks. We are less optimistic, however, regarding the Southwest Stock. Although data are still insufficient or lacking to compare the Southwest Stock's status to the ESA downlisting/delisting criteria, preliminary data for adult survival indicate that the Southwest Stock is below the benchmarks established in the Florida Manatee Recovery Plan.

Although we are optimistic about the apparent increases in population in three out of the four stocks, it is important to clarify that, in order to downlist or delist the manatee pursuant to the ESA, all four stocks must simultaneously meet the appropriate criteria as described in the Florida Manatee Recovery Plan. Additionally, any action under the ESA would be based on a status assessment for the species throughout its range and must consider the factors, as described in section 4(a)(1) of the ESA, that determine whether any species meets the definition of endangered or threatened.

Watercraft-Related Impacts to the Florida Manatee

Between 1976 and 2002, watercraft-related mortality accounted for 24 percent of total mortality and increased at an average rate of 7.3 percent per year

(Florida Marine Research Institute 2002). From 1996 to 2002, watercraft-related deaths have been the highest on record. Additionally, many living manatees also bear scars or wounds from vessel strikes, indicating that watercraft are also responsible for a substantial amount of harassment of manatees. An analysis of injuries to 406 manatees killed by watercraft and recovered between 1979 and 1991 found that 55 percent were killed by impact, 39 percent were killed by propeller cuts, four percent had both types of injuries, either of which could have been fatal, and unidentified specifics of the collision had caused two percent of the mortalities (Wright *et al.* 1995). The vast majority of available information regarding the effects of watercraft-related activities on manatees is related to lethal take of manatees. For the purposes of this analysis, we are assuming that activities that result in the lethal take of manatees also have similar levels of sub-lethal effects on manatees and manatee habitat.

Watercraft speed is the primary factor contributing to collisions with manatees. At high speeds, watercraft operators are less able to detect and avoid objects (such as manatees) in the path of the vessel and manatees have less time to detect and avoid the on-coming vessel. Due to these facts, Federal, State, and local officials have sought to limit watercraft speeds in areas where manatees are most likely to occur to afford both manatees and boaters time to avoid collisions. Additionally, the mere presence of watercraft can cause harassment of manatees in certain situations; most notably at warm water aggregation areas, where large numbers of manatees congregate to stay warm during winter months. Disturbance of manatees at these sites can cause manatees to leave the warm water area, exposing them to potentially harmful cold water conditions. To address this threat, State and Federal officials have restricted human access to many important warm water sites during winter months. The establishment of speed zones and restricted access areas do not cause or contribute to incidental take, per se; however, to the extent that agencies exempt, except, permit, or otherwise authorize restricted or prohibited activities to occur in such areas, such authorization may cause or contribute to the incidental take of manatees.

The number of watercraft operating on Florida's waters may also be a factor. The FWC Division of Law Enforcement reported that, in 1999, more than one million vessels used Florida's waterways, including over 829,000 State-registered vessels and about 300,000 out-of-state vessels. Boating continues to increase in Florida as evidenced by just over 943,600 State-registered vessels (FWC 2002a) and more than 400,000 out-of-state vessels for 2001. At the same time, watercraft-related manatee mortality and increasing mortality trends have been documented since collection of manatee mortality data began in 1974. Data regarding causes of manatee deaths, and particularly the increasing number of watercraft-related deaths, should be viewed in the context of Florida's growing human population, which has increased by 130 percent since 1970, from 6.8 to 15.7 million in 2000 (Florida Office of Economic and Demographic Research 2001). The rise in manatee deaths during this period is attributable, in part, to the increasing number of people and watercrafts sharing the same waterways. It should also be noted that the increasing number of deaths could, in part, be due to increasing numbers of manatees. If existing protection (zones and enforcement) for manatees remains at its current standards, we anticipate that human-caused take will continue to increase to levels that will lead to a declining population in certain portions of the population, which may already be occurring for the Southwest Stock. As noted above, the number of manatee carcasses recovered statewide each year is increasing at a rate that is likely greater than the rate of increase in the manatee population. Continuation of this trend would inevitably lead to a population decline. During the past five years (1997 to 2001), the watercraft-related deaths have been the highest on record with 55, 66, 82, 78 and 81, respectively. This year (2002), watercraft-related mortalities have surpassed 1999 as highest on record.

As noted above, where and how fast watercraft are operated are the most important factors in watercraft-related incidental take of manatees. However, other activities related to operation of watercraft are contributing factors to incidental take. Virtually all watercraft operating in Florida waters gain access to those waters by watercraft access facilities. Construction and operation of such facilities have the potential to affect manatee habitat such as seagrass beds, and construction activities have the potential to harass manatees. Additionally, the availability and location of watercraft access facilities influence the number of watercraft that use any given waterbody, as well as watercraft travel patterns. To the extent that the location and size of a watercraft access facility contributes to increased watercraft access to areas of importance to manatees such as aggregation areas, travel corridors, feeding areas, resting areas, calving areas, and other areas where manatees occur, these facilities can indirectly cause or contribute to the incidental take of manatees by watercraft. Given that over one million watercraft use Florida waters each year, the relative effect of any particular watercraft access facility on watercraft traffic volume or travel is generally small statewide. However, the cumulative effects of constructing many facilities substantially influences the number of watercraft on Florida's waters and the travel patterns of those vessels, which can substantially influence interactions between watercraft and manatees. Additionally, in certain situations the construction of a new watercraft access facility may substantially influence watercraft travel patterns and volume locally. As such, the authorization, funding, and/or operation of watercraft access facilities by government agencies can cause or contribute to incidental take of manatees.

Determination of Negligible Impact

Background

The MMPA states that, ''it is the sense of the Congress that [marine mammals] should be protected and encouraged to develop to the greatest extent feasible commensurate with sound principles of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem.'' Section 2 of the MMPA also identifies a specific goal of maintaining marine mammal stocks within their Optimum Sustainable Population (OSP) level. However, it is also clear that Congress did not intend that the level of incidental take must in every case be reduced to zero. Section 101(a)(5)(A) clearly indicates that some level of incidental take of even depleted marine mammals can be authorized as long as the impact is negligible.

In the 1986 amendments to the MMPA, Congress expanded the provisions for the authorization of incidental take of marine mammals related to activities other than commercial fisheries by allowing authorization of take of depleted species as well as non-depleted species. Section 3 of the MMPA defines a ''depleted'' species as one that is either below its OSP or is listed as endangered or threatened under the ESA. The Florida manatee is listed as an endangered species under the ESA, and therefore,

all four stocks are categorized as depleted under the MMPA.

The NOAA-Fisheries and the Service issued final rules implementing the 1986 amendments to the MMPA on September 29, 1989 (54 FR 40338). These regulations define ''negligible impact'' as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 18.27(c)). The preamble to these regulations described the analytical framework the agencies would use when making negligible impact determinations. For non-depleted stocks (*i.e.*, stocks that are within the range of OSP) the agencies stated that a finding of negligible impact could only be made if the specified activities are not likely to reduce the stock below its OSP. However, it was also noted that not all takings that do not reduce the population below OSP would be considered negligible. The agencies explained that—''healthy marine mammal populations that have reached an equilibrium level usually experience fluctuations in population numbers within some normal range due to a variety of environmental and biological factors. Such fluctuations may involve short-term population declines that do not pose a risk to the stocks remaining within the limits of OSP. We believe that minimal impacts on a healthy stock caused by incidental taking can still be considered negligible if such taking does not cause the population to fluctuate beyond normal limits. In other words, for a population stock that is at its OSP level, slight impacts on the stock resulting from incidental take do not rise to the level of 'adverse effects' on annual rates of recruitment or survival if the population stock is maintained at essentially the same level.''

With respect to depleted stocks, the preamble to the 1989 regulations states— ''In order to make a negligible impact finding, the proposed incidental take must not prevent a depleted population from increasing toward its OSP at a biologically acceptable rate.'' In explaining what would constitute a ''biologically acceptable rate'' of population increase, the agencies stated that in order to be considered ''negligible'' the effects of the authorized take must have no significant effect on annual rates of recruitment or survival. The population growth rate for any species is the result of all births during the year (recruitment) minus all deaths (animals that do not survive). As such, to be considered ''negligible,'' authorized incidental take must not affect annual rates of recruitment or survival in such a way as to significantly affect the population growth rate of a depleted stock. The analytical framework made clear that it was not necessary to demonstrate that an authorized level of take would have ''no effect'' on a stock's rate of increase toward OSP, but only that the take would not significantly affect the long-term population trend.

Methodology

The language of the MMPA and its implementing regulations provide qualitative descriptions of the goals with respect to take of marine mammals. For the purposes of this rulemaking, we translated these goals into standards against which the effects of the specified activity may be measured. The means of making the best use of available scientific information regarding the Florida manatee in our negligible impact determination was discussed at the April 2002 Manatee Population Ecology and Management Workshop. We provided the expert panelists convened at the workshop with background information including a summary of the existing statute and regulations, rulemaking criteria and timeframes, and methods previously considered, and the topic was discussed at a general session of the Workshop. We also presented new information at the April 2002 Workshop regarding the status of the manatee population and the status of manatee research. Additionally, we presented new population models and analyses that showed substantial promise for improving our ability to assess the status of manatee stocks, and to predict and monitor the effects of various factors, including human factors, on manatee populations.

Following the April 2002 Workshop, we held a meeting of scientists from the U.S. Geological Survey (USGS), the Service, and other organizations with specific expertise in population modeling and marine mammals to further clarify the Workshop discussions. Based on our review of the legislative history of the MMPA, its implementing regulations, existing guidance, past incidental take rulemakings, the scientific literature, and the results of the Workshop and the follow-up meeting, we were able to develop a solid conceptual framework upon which to build our negligible impact determination.

In reviewing existing guidance and previous rulemakings, we note that participants at the 1994 Potential Biological Removal (PBR) Workshop (Barlow *et al.* 1995) agreed that the term ''insignificant'' in the Zero Mortality Rate Goal for commercial fisheries (as stated in section 101(a)(2) of the MMPA) was relative to the biological significance of the incidental take. They further agreed that an ''insignificant'' level of mortality was a level that would have a ''negligible'' impact on a given marine mammal stock. In terms of stocks that are depleted (*i.e.*, population levels below OSP), it is generally accepted that the large majority of annual net productivity must be reserved for the recovery of the stock to its OSP level, and that only a small portion should be allocated for incidental take, so that human-related take does not significantly increase the time needed to reach OSP. Therefore, based on our interpretation of the MMPA, its implementing regulations, previous incidental take rulemakings, and our current understanding of manatee population dynamics, we concluded that in order for us to determine that the allowable level of human-related incidental take would have a ''negligible impact'' we must be reasonably certain that the take would not significantly increase the time needed to achieve OSP.

For this rulemaking we must ensure that the total taking authorized over the life of the rule has no more than a negligible impact on the stocks through effects on annual rates on recruitment or survival, so the species will continue to increase toward OSP at a biologically acceptable rate. As such, in order to find that watercraft-related incidental take is having a negligible impact on each manatee stock we must find that:

1. There is reasonable certainty that authorized incidental take will not significantly increase the time needed to reach OSP.

The PBR formula was suggested as an available method for quantitatively making our negligible impact determination for this rule. The PBR formula was included in sections 117 and 118 as part of the 1994 amendments to the MMPA to allow resource managers to conservatively estimate an acceptable amount of human-related incidental take of marine mammals relative to commercial fishing operations. We do not believe it was intended for assessing incidental take relative to the ''negligible impact'' standard prescribed by the MMPA for activities other than commercial fishing, which was added to the MMPA in 1981. Additionally, the PBR formula is a simplified model that uses limited data and default values that we believe are not appropriate for determining the negligible impact threshold for

manatees. There is a relatively large body of data regarding the Florida manatee stocks which is not utilized in the PBR formula. As such, the use of the PBR formula for management decision-making related to manatees would not enable managers to use the best available scientific information.

As stated previously, our negligible impact standard is that there is reasonable certainty that the authorized level of incidental take would not significantly increase the time needed to reach OSP. Determining the OSP level for a species or stock requires an understanding of the carrying capacity of the environment for that species or stock and the maximum net productivity level. These values are currently unknown for the Florida manatee; therefore, we can not directly assess the status of the population relative to OSP, or estimate the amount of time it may take for the population to reach OSP. However, our regulations do not require a formal determination of OSP in order to make a negligible impact finding. Rather, one need only establish that the total take would not ''significantly reduce the increase of that population'' and would not prevent ultimate achievement of OSP (54 FR 40341).

The Florida Manatee Recovery Plan (U.S. Fish and Wildlife Service 2001) developed quantifiable demographic benchmarks for determining when recovery has been achieved for purposes of the ESA. The demographic benchmarks were based on published estimates of survival, reproduction, and population growth rate. These benchmarks are—(1) statistical confidence (95 percent) that the average annual rate of adult manatee survival is 90 percent or greater; (2) statistical confidence that the average annual percentage of adult female manatees accompanied by first or second year calves in winter is 40 percent or greater; and (3) statistical confidence that the average annual rate of population growth is equal to or greater than zero. The Florida Manatee Recovery Plan states that these benchmarks must be based on estimates from at least a twenty-year data set. Twenty years was thought to encompass approximately two manatee generations, which was deemed to be a sufficient data set to ensure that estimated benchmark rates were reflective of genuine population trends as opposed to short-term fluctuations.

Adult survival is the most influential factor determining manatee population dynamics (Eberhardt and O'Shea 1995, Marmontel *et al.* 1997, Langtimm *et al.* 1998). A one percent increase in adult survival rate results in a one percent increase in growth rate; no other life-history parameter has this strong an effect (Eberhardt and O'Shea 1995). While manatee population growth is less sensitive to changes in reproductive rates than adult survival rates (Eberhardt and O'Shea 1995, Marmontel *et al.* 1997), annual variation in reproductive rates might be greater than annual variation in survival rates, and may reflect demographic pressures not captured by survival rate, so the Manatee Population Status Working Group concluded that reproductive rates are another useful indicator of manatee population status. The population growth rate benchmark was selected to ensure the manatee population continues to increase toward OSP, regardless of any uncertainty regarding the relationship between the other two benchmarks and the overall population trend.

As stated above, it was concluded in the Florida Manatee Recovery Plan that the Florida manatee population could be considered to be ''healthy'' and able to sustain itself after the demographic benchmarks were met for all four stocks based on at least a 20-year data set. Assuming that none of the stocks were severely depleted when data collection relative to the demographic benchmarks began (in the late 1970s and 1980s), twenty years of continued growth at the benchmark rates would in all likelihood result in stocks that are within or near the range of OSP. As such, we have determined that it is reasonable to assume that achievement of the demographic benchmarks will result in a population that is within or near the range of OSP, and that the negligible impact threshold would be that level of incidental take that does not significantly increase the time needed to achieve the demographic benchmarks.

We examined the current data set and analyses of survival rates, and recruitment, and reviewed population growth rate projections generated by the model presented by Runge *et al.* at the April 2002 Manatee Population Ecology and Management Workshop (Runge unpubl. analysis), which incorporate the historically observed level of watercraft-related incidental take. This enabled us to qualitatively assess the status of the four stocks relative to the demographic benchmarks, and determine whether anticipated levels of watercraft-related take during the five-year period of the rule are likely to significantly increase the time needed for the stocks to reach OSP. These assessments were based on a twenty year data set including 15 years of historical data and projections (including levels of watercraft-related take) for the five-year period of the rule. For the Southwest population, for which a 15 year historical data set is not available, we made projections based on the available historical data and the long-term trends of the survival rates (which incorporate watercraft-related take), recruitment, and population growth rates of the 15 year period necessary to run our assessment

For each of the stocks, our projected information covered a twenty-year period ending with the five-year period of this rule. Using these projections, we qualitatively assessed the status of the four stocks relative to the demographic benchmarks. As part of this analysis we considered effects of activities that would occur within the five-year period of this rule but that may not manifest themselves until after the five-year period. Due to life history characteristics, the Florida manatee population may experience a delayed response to changes in mortality rates. Therefore, effects resulting from incidental take may not produce noticeable changes during the five-year period, but could affect the ability of the stock to maintain itself within OSP or affect the rate of increase toward OSP over a longer term. We also assessed the availability and relative effectiveness of various types of mitigating measures.

In addition, separate from this rulemaking process, we are working to ensure that we meet the MMPA's long term goal of maintaining marine mammal populations within OSP. The Florida Fish and Wildlife Conservation Commission (2002b) noted that manatees have a low reproductive rate, low intrinsic population growth rates, low genetic variability, and high vulnerability to stochastic and epizootic events such as extreme cold and red tide. The Florida Marine Research Institute (2002) also noted that long term threats to the Florida manatee related to natural and man-made warm water sites are likely to be felt over the next 50 to 100 years. As such, we have the established standards to measure the stocks' relationship to OSP over the longer term. These objectives are stated as follows:

2. There is reasonable certainty that the manatee stock will remain within OSP for 50 years; and

3. There is reasonable certainty that the manatee stock will remain within OSP for 100 years.

The determinations in this proposed rule are based on our review of the best available data, and we believe this method is adequate for making this negligible impact determination. We believe that it may be possible to refine this analysis based on a modeling effort

that is currently being developed. As stated above, in terms of stocks that are depleted (*i.e.*, population levels below OSP), it is generally accepted that the large majority of annual net productivity must be reserved for the recovery of the stock to its OSP level, and that only a small portion should be allocated for incidental take, so that human-related take does not significantly increase the time needed to reach OSP. It is also generally accepted that the ''small portion'' of net productivity authorized for removal due to human causes should not exceed ten percent of annual net productivity, and that for depleted stocks of marine mammals generally, incidental take should not increase the time needed to reach OSP by more than ten percent (Wade 1994, Wade and Angliss 1997).

The concept of increasing the time needed to achieve OSP by not more than ten percent is embodied in the PBR guidelines and is consistent with recommendations submitted to the NOAA-Fisheries by the Marine Mammal Commission in 1990 regarding the regulation of incidental take related to commercial fishing operations (65 FR 35904). This concept also appeared in the 1992 legislative proposal by NOAA-Fisheries, which became the basis for the 1994 amendments to the MMPA (Wade 1998).

Because most marine mammal species, including manatees, are difficult to observe and study, it is difficult to collect data of sufficient quality to allow detection of statistically significant changes in population parameters such as abundance or growth rate within the timeframes and with the precision needed for effective management (Wade 1998). As such, assessing the probability of a given action (or set of actions) causing a greater than ten percent increase in time needed to achieve OSP provides a reasonable standard, whereas attempting to quickly detect statistically significant changes in population parameters is impracticable.

The negligible impact standard established above could be restated quantitatively as follows:

1. There is 95 percent certainty that authorized incidental take will not increase the time needed to reach OSP by more than ten percent;

Additionally, the long term standards established above could be restated as follows:

2. There is a 95 percent probability that the manatee stock will be within OSP in 50 years; and

3. There is a 99 percent probability that the manatee stock will be within OSP in 100 years.

Regarding the probabilities associated with the above standards, the 95 percent probabilities for the first two standards were chosen to be consistent with the modeling approach used by Wade (1994) for selecting appropriate values for the PBR equation variables. We selected a higher probability value for the third standard to reflect the relative importance of our long term desire to ensure that each stock remains within OSP.

New population models and analyses were presented at the April 2002 Manatee Population Ecology and Management Workshop that clearly represent state-of-the-art analyses of manatee population status. Additionally, new data were presented regarding important manatee life history parameters; particularly, survival estimations for various life stages. In reviewing the models and analyses presented, it was decided that the model presented by Runge *et al.* (2002) was most suitable for adaptation for use in our negligible impact determination. This model was determined to be particularly well suited for use in the negligible impact determination because it utilizes the best available scientific information regarding Florida manatee survival estimates. It also utilizes the best available information regarding reproductive rates (recruitment) in Florida manatees. The fact that the model is built on estimates of survival and recruitment also corresponds directly to the regulatory definition of ''negligible impact.''

The Negligible Impact Model (model), based on the work of Runge *et al.* (2002), is described in detail in Appendix I of the draft Environmental Impact Statement. The model is based on female manatee population dynamics. The female manatee population is separated by age and reproductive status. Survival and reproductive probabilities are defined for each class. The model projects population trends for each of the four manatee stocks based on repeated simulations that incorporate environmental and demographic variability, as well as varying levels of human-related take.

Discussions with the model's author indicated that the model could be modified to allow for estimation of the effects of varying levels of human-related incidental take on population structure and growth. Projections can be made assuming that no human-related take occurs. This establishes the baseline condition for purposes of comparison. In other words, in the absence of any incidental take, the four stocks would be expected to achieve the demographic benchmarks as quickly as possible. This baseline can then be compared to projections based on various levels of incidental take to determine at what point such take causes a greater than ten percent increase in the time needed to achieve the demographic benchmarks. Repeated simulations are performed to create a distribution of population projections from which the probability of achieving the benchmarks for a given level of take can be calculated.

In examining the possibility of modeling the time needed to achieve the demographic benchmarks, we realized that the Negligible Impact Model may indicate, under certain foreseeable scenarios, that the demographic benchmarks cannot be achieved even in the absence of incidental take. As mentioned above (see ''The Status of the Florida Manatee'' section), a substantial portion of the Florida manatee population currently depends on industrial warm water outfalls for survival during cold weather. It is likely that these sites will cease operation over the next 100 years; although we do not believe the loss of any significant warm water sites is currently imminent or likely over the term of this proposed rule. If alternative warm water sites are not available, the carrying capacity of the environment for manatees could be substantially reduced. This could substantially affect future demographic factors such as survival rates and population growth rates, even if no other human-related take occurs. It would also affect the OSP level for the species. The model will be used to assess scenarios based on the assumption of a declining carrying capacity as well as scenarios in which the carrying capacity is assumed to remain unchanged. If model results indicate that the demographic benchmarks cannot be maintained over 50 and 100 years for reasons unrelated to watercraft-related incidental take, we will reassess our assumed relationship between the demographic benchmarks and OSP, and base our final determination on the best available scientific information.

If our analysis indicates that the currently observed level of incidental take exceeds the negligible impact standards (*i.e.*, if current incidental take levels are increasing the time needed to achieve the demographic benchmarks by more than ten percent and/or are likely to prevent the stocks from continuing to meet the benchmarks over 50 and 100 years), then we would assess whether mitigating measures (discussed below) are available that could reduce incidental take to the negligible impact level.

Mitigating Measures

We have identified five categories of mitigating measures that government agencies can implement to reduce and control watercraft-related incidental take. In decreasing order of effectiveness these include—(1) establishment of speed zones and protected areas to control watercraft speeds and/or restrict access to areas of importance to manatees; (2) law enforcement to ensure compliance with restrictions established pursuant to (1); (3) education to improve public understanding of manatee conservation needs and enhance compliance with manatee protection measures; (4) review of proposals to construct watercraft access facilities with a view toward minimizing the effects of such facilities on manatees and manatee habitat; and (5) other measures that are available or may become available over the period of this rule. Although the categories vary in terms of their relative effectiveness, they cannot be viewed as completely separate measures because the effectiveness of each depends on others. For example, speed zones must be enforced and the public must be informed and educated about the zones through appropriate signage and outreach in order for the zones to provide effective protection of manatees.

1. *Watercraft Regulations*—As previously stated (see Watercraft-Related Impacts to the Florida Manatee) watercraft operation and speed are the primary factors contributing to collisions with manatees. As such, government programs that regulate watercraft speeds and access to areas of importance to manatees have the greatest potential to control watercraft-related incidental take. At high speeds, watercraft operators are less able to detect and avoid objects in the path of the vessel (such as manatees) and manatees have less time to detect and avoid the on-coming vessel. Additionally, when collisions do occur, high-speed collisions are more likely to cause death or serious injury than low speed collisions. Due to these facts, Federal, State and local officials have sought to limit watercraft speeds in areas where manatees are most likely to occur to afford both manatees and boaters time to avoid collisions.

In addition to the threat posed by collisions with watercraft, the mere presence of watercraft can cause harassment of manatees in certain situations; most notably at warm water aggregation areas, where large numbers of manatees congregate in small areas in order to stay warm during winter months. Disturbance of manatees at these sites can cause manatees to leave the warm water area, exposing them to potentially harmful cold water conditions. To address this threat, Federal, State and local managers have restricted human access to many important warm water sites during winter months.

Watercraft speed and access are controlled through—(a) establishment of watercraft speed zones and restricted access areas, including posting of appropriate signage; and (b) regulation of specific marine events; particularly high-speed watercraft races. Federal, State, and local government agencies have the authority to designate speed zones and restricted access areas within waters accessible to manatees. At the Federal level, we designate ''manatee protection areas'' pursuant to 50 CFR 17.103. We may, by regulation, establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and SCUBA diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredging and filling activities.

State manatee protection rules are established by the FWC to restrict the speed and operation of vessels where necessary to protect manatees from harmful collisions with vessels and from harassment. In areas that are especially important to manatees, the State's rules can prohibit or limit entry into an area as well as restrict what activities can be performed in the area. The FWC is authorized to adopt these rules by the Manatee Sanctuary Act (370.12(2), Florida Statutes). The rules appear in Chapter 68C–22 of the Florida Administrative Code (FAC).

Local governments can also establish manatee protection zones through the adoption of a local ordinance. These zones must be approved by FWC before they can take effect, as required by Chapter 370.12(2)(o), F.S. The only other limitation on a local government's ability to establish manatee protection zones is that local zones cannot include waters within the main marked channel of the Florida Intracoastal Waterway or waters within 100 feet. The FWC manatee protection rulemaking process is described in rule 68C–22.001, FAC.

The goal with respect to the establishment of watercraft speed zones and restricted access areas is to identify areas of importance to manatees, including wintering sites, travel corridors, feeding areas, calving areas, and other areas of similar importance, and to ensure that such areas are protected with appropriate designations. Designations should be consistent at a regional level and configured as simply as possible to facilitate public understanding and compliance. Signage for all designated areas should be consistently and appropriately worded and located in order to enhance compliance in all manatee protection areas.

Marine events are regulated at the Federal level by the U.S. Coast Guard (USCG), in consultation with us. Marine events include watercraft races, ski shows, fishing tournaments, boat parades and events such as fireworks shows, which can attract large numbers of spectators in watercraft. Marine events involving high-speed activities are of primary concern as it relates to threats to manatees. These events generally include races, waterskiing and fishing tournaments with high-speed starts or other high-speed operations. The USCG is authorized to issue regulations to promote the safety of life on navigable waters during regattas and marine parades (33 U.S.C. 1233). This authority includes events on, in, and under the water.

Whenever a marine event is planned by an individual or an organization (the sponsor) which, by its nature, circumstances, or location, will restrict navigation or otherwise introduce extra or unusual hazards to the safety of life on navigable waters of the United States, the sponsor must submit an application to the USCG for review and approval. The application is received and investigated by respective district, group, or unit offices that have authority to permit or deny the proposed event. Current USCG policy allows issuing authorities to add conditions or deny permits for marine events based on environmental concerns (COMDTINST 16751.3A, Regattas and Marine Parades). In Florida, sponsors apply to USCG group offices in Key West,

Mayport, Miami, and St. Petersburg. USCG reviewers investigate each application and, when appropriate and as required under section 7 of the ESA, request consultation with us when it is apparent that the proposed event may affect manatees or other listed species. The USCG also coordinates with the Florida Department of Environmental Protection for events held in State waters. Through these review processes it is generally recommended that marine events be held in areas and at times when there is little or no likelihood of encountering manatees. When this is not possible, it is either recommended that the event not be held or that certain measures be adopted as a condition of the USCG permit to minimize the effect of the event on manatees and manatee habitat. These measures include the use of manatee watches, designating slow speed areas for the duration of an event, education of event participants and spectators, and other measures.

2. *Enforcement*—In order to be effective in controlling watercraft-related incidental take, there must be a high level of compliance with established watercraft speed zones and restricted access areas. Enforcement is an important element of compliance. Ideally, our goal is to achieve full compliance with manatee protection regulations. Studies indicate that in the absence of law enforcement roughly 54 to 63 percent of boaters are in compliance with posted speed zones; while 20 to 51 percent are in technical non-compliance (exceeding posted speeds by one speed category or any level of excessive speed for a relatively small distance within the posted area), and the remainder are in blatant non-compliance (exceeding posted speeds by greater than one speed category for a significant portion of the posted area) (Gorzelany 1996, 1998, 2001; Shapiro 2001). Studies have found, however, that the level of boater compliance is variable depending on location. For example, Gorzelany (1998) found overall boater compliance for several sites in the Caloosahatchee River averaged 57.3 percent, but ranged from a low of 12 percent to a high of 77 percent. In the presence of law enforcement, Shapiro (2001) recorded a compliance rate of up to 89 percent. Gorzelany (2001) observed an increase of compliance from 29–44 percent to 64–73 percent in the presence of law enforcement. Our proposed compliance goal, based on recent work by Mote Marine Laboratory and Florida Marine Research Institute (Gorzelany 1996, 1998, 2001, Shapiro 2001), is to achieve 70 percent or greater full compliance and no more than ten percent blatant non-compliance levels throughout the State, as determined by independent monitoring studies. Based on the above-mentioned studies, this level of compliance appears to be achievable, while also representing the upper range of observed compliance levels in the presence of enforcement. We recognize that this goal does not assess the effects of other important aspects of compliance. For example, in situations where there are very high number of watercraft operating in an area with high numbers of manatees, achieving the above compliance standard could still lead to a high number of non-compliant watercraft operating in a manner that poses a threat to manatees.

Enforcement of manatee protection rules is provided by officers of the Service, FWC, USCG, and local law enforcement agencies, as well as the courts. To ensure compliance with the waterway speed and access rules and with manatee harassment provisions, enforcement capabilities must be expanded and coordinated. Although efforts have increased significantly during the past few years, manatee enforcement operations still must be expanded in both geographic scope and frequency. To meet these needs, Federal and State enforcement agencies should take all possible steps to increase funding and heighten agency priority for manatee-related law enforcement activities. Those activities should be maintained at levels commensurate with those of vessel traffic, watercraft-related manatee deaths, and added enforcement responsibilities. To carry out enforcement activities as efficiently and cost-effectively as possible, involved agencies should coordinate enforcement efforts. In addition, enforcement agencies should review and assist as much as possible with the development of new manatee protection statutes and regulations, the posting of manatee regulatory signs, enforcement training seminars, studies to monitor regulatory compliance, and actions by the judiciary to prosecute violations.

3. *Watercraft Operator Education/Awareness*—In addition to signage and enforcement, watercraft operator education and awareness is essential to achieving greater compliance within and understanding/recognition of manatee protection areas, as well as the general public's understanding of manatee conservation issues. A study by the Environmental Protection Agency (EPA) found that the more the EPA invested in outreach and education through various avenues, including press releases, trade articles, and plain English brochures, the greater the likelihood that companies would be informed about environmental regulations and be likely to comply (Eustis 1993). Many manatee and habitat education programs and materials are produced and made available to school systems as well as the general public and user groups; however, such efforts need to be continually evaluated and updated. This information must be clear, consistent, concise, and readily available to the general public and target user groups. As such, Federal and State agencies should cooperatively develop uniform multi-media educational programs/curricula for the general public and schools, and ensure that these materials are provided to all watercraft operators utilizing Florida waters.

The success of manatee/habitat conservation efforts requires identification of target audiences and locations. Target audiences and key locations should be prioritized by need, *i.e.*, areas where manatee mortality and injury are highest, areas where manatee/human interaction occurs frequently, and areas where habitat is most at risk. These areas include, but are not limited to, high watercraft use areas, boat ramps, manatee aggregation sites, manatee observation areas, fishing piers, seagrass areas, and other areas identified as having important habitat features (*e.g.*, fresh water areas and areas used for resting and/or calving). It is also important that some materials explicitly target specific user groups, such as boaters in areas of high watercraft mortality.

4. *Watercraft Access Facility Siting*—The siting and construction of watercraft access facilities can be directed through local zoning, in the form of facility siting components of county manatee protection plans (MPPs), or through Federal and State permitting processes.

A. Watercraft Access Facility Siting Plans—Development of MPPs is mandated by the Florida Manatee Sanctuary Act (Chapter 370.12, F.S.). Watercraft access facility siting plans, as components of comprehensive county MPPs, are excellent tools for guiding long-term watercraft access facility development and anticipating and addressing the cumulative impacts of such facilities. By anticipating and planning for the future access needs at a county-wide level, the cumulative effects on manatees and manatee habitat can be anticipated and mitigated. It is our view that this forward-looking approach is preferable to the more reactive approach or dealing with the effects of such facilities on a case-by-case basis. Under the Florida Manatee

Sanctuary Act, 13 counties are mandated to develop MPPs by July 1, 2004. The FWC is to designate any other county where there exists a substantial risk to manatees by January 1, 2005, and those counties are to develop MPPs by July 1, 2006.

B. Permit review—The agencies involved in the authorization of watercraft access facilities and their regulatory processes are described above (see Specified Activities). Through these review processes, the potential adverse effects to manatees or manatee habitat are identified, and if necessary permits can be specifically conditioned to avoid the adverse impacts, or where appropriate, denied. Typical permit conditions include limitations on the number of slips, and avoidance or minimization of impacts to sea grasses and other habitat features. Additionally, standard manatee construction conditions have been developed that are utilized by the Corps as well as State regulatory agencies to minimize the direct effects of watercraft access facilities on manatees and manatee habitat. These conditions include education of construction personnel regarding manatee awareness; control of construction-related vessel speeds; use of construction equipment such as siltation barriers that avoid manatee entrapment; stand-off distances from manatees sighted in construction area; and manatee awareness signage. These standard conditions and other conditions developed through the permit review process have been effective in minimizing the direct effects of watercraft access facilities and their construction on manatees and manatee habitat.

5. *Technological and Other Mitigating Measures*—Devices such as propeller guards have been used in limited circumstances to reduce the threat of manatee death or injury. Other technologies have been discussed or proposed; however, none have yet been demonstrated to be effective or practical. The FWC has recently funded additional research into various types of technological measures to reduce watercraft-related take of manatees, and any such measures that are demonstrated by this research, to be effective and practicable to implement during the period of this rule will be considered along with the mitigating measures described above. This would occur through future review and renewal of agency LOAs.

Negligible Impact Analysis and Conclusions

Based on our application of the above described method for assessing the status of Florida manatee stocks relative to the ''negligible impact'' standards and our review of the existing and potentially available/necessary mitigating measures, we have made the following findings for each of the four stocks. As stated above, these determinations are based on our review of the best available data, and we believe this method is adequate for making this negligible impact determination. It may be possible to refine this analysis for the final rule based on a modeling effort that is currently being developed.

1. *Upper St. Johns River Stock*—Adult survival for this Stock has been calculated to be 96.1 percent with a 95 percent confidence interval range from 90.0 to 98.5 percent (Langtimm *et al.* 1998), based on data collected between 1977 and 1993. It is estimated that 41 percent of females at the winter sites are accompanied by first or second-year calves (U.S. Fish and Wildlife Service 2001). It is also estimated that this stock is growing at a rate of 6.1 percent per year, with a 95 percent confidence interval between 1.7 and 8.7 (Runge, unpubl. analysis). All three estimates exceed the levels indicated in the demographic benchmarks, which indicates a healthy and growing population, and provided the factors affecting this population remain essentially the same (including continued implementation of existing conservation measures), we anticipate that the stock will continue to increase toward OSP at a biologically acceptable rate.

Existing conservation measures in this area include an adequate system of watercraft speed zones that have been implemented by the FWC. There is also a seasonal motorboat prohibited zone at Blue Spring, the primary wintering site for this stock. These zones are enforced by local, State and Federal law enforcement. Shapiro (2001) reported 85 percent compliance with speed zones near Blue Spring in the presence of law enforcement. There are no County MPPs in place within this Stock; however, Volusia County is in the process of preparing one. In the absence of county MPPs, applications for construction of watercraft access facilities are reviewed on a case-by-case basis, and effective measures to reduce impacts on manatees will be required. Other measures such as boater education and regulation of marine events are also carried out within this Stock. As reflected by rates that exceed the demographic benchmarks, these measures are effectively controlling the amount of watercraft-related incidental take. Our analysis of historic levels of watercraft-related incidental take, levels of take anticipated during the five-year period, and the effectiveness of existing measures indicates that the anticipated take during the five-year period will not significantly affect rates of recruitment or survival. Provided existing measures continue to be implemented we expect this Stock to continue to perform at the currently observed level, and there will be no significant delay in achieving OSP. Therefore, we find that watercraft-related incidental take is having a negligible impact on this Stock. Separate from our negligible impact finding, we also find no evidence to suggest that the currently observed levels of watercraft-related incidental take will adversely affect long term population trends.

2. *Northwest Stock*—Adult survival for this Stock has been calculated to be 96.2 percent with a 95 percent confidence interval range from 95.3 to 97.2 percent (Langtimm *et al.*, unpubl. analysis), based on data collected between 1981 and 2000. It is estimated that 43 percent of females at the winter sites are accompanied by first or second-year calves (U.S. Fish and Wildlife Service 2001). It is also estimated that this Stock is growing at a rate of 5.0 percent per year, with a 95 percent confidence interval between 3.2 and 6.8 (Runge, unpubl. analysis). All three estimates exceed the levels indicated in the demographic benchmarks, which indicates a healthy and growing population, and provided the factors affecting this population remain essentially the same (including continued implementation of existing conservation measures), we anticipate that the stock will continue to increase toward OSP at a biologically acceptable rate.

As reflected through rates that exceed the demographic benchmarks, the existing measures that are in place in this stock are effectively controlling the amount of watercraft-related incidental take. These measures include implementation of the Citrus County MPP. This plan was adopted in 1993 and includes, among other components, an adequate set of speed zones in areas of importance to manatees. Additionally, we have established several manatee protection areas that prohibit and control watercraft access to important wintering sites within the County. One of these sites is also designated as a seasonal watercraft prohibited area by the FWC. The speed zone and restricted access area regulations are enforced by County, State and Federal law enforcement.

The Citrus County MPP also includes a watercraft facility siting component

that establishes effective criteria for the location and construction of such facilities within the County. The MPP has been adopted by local, State, and Federal agencies for evaluating the effects of proposed watercraft access facilities on manatees and manatee habitat. Other measures, such as boater education and regulation of marine events, are also carried out within this Stock.

No other counties within this stock have adopted MPPs and no other speed zones or restricted access areas have been established for manatee protection. However, manatee use of the waters outside Citrus County is limited to the warm season, and this portion of Florida is much less densely populated than other areas of Florida. As such, there is much less watercraft traffic and the threat of collisions between boats and manatees is low. Our analysis of historic levels of watercraft-related incidental take, levels of take anticipated during the five-year period, and the effectiveness of existing measures indicates that the anticipated take during the five-year period will not significantly affect rates of recruitment or survival. Provided existing measures continue to be implemented we expect this Stock to continue to perform at the currently observed level, and there will be no significant delay in achieving OSP. Therefore, we find that watercraft-related incidental take is having a negligible impact on this Stock. Separate from this negligible impact determination, we also find no evidence to suggest that the currently observed levels of watercraft-related incidental take will adversely affect long term population trends.

3. *Atlantic Stock*—Adult survival in this Stock has been calculated to be 94.3 percent with a 95 percent confidence interval range from 92.3 to 96.2 (Langtimm *et al.*, unpubl. analysis), based on data collected between 1984 and 2000. The percentage of adult females with first and second-year calves has been estimated to be 42 percent (U.S. Fish and Wildlife Service 2001). The annual population growth rate has been calculated to be 3.2 percent with a 95 percent confidence interval range between 0.3 and 5.7 (Runge unpubl. analysis). These three estimates are close to the demographic benchmarks. However, the number of manatees killed by watercraft increased at a rate of 5.5 percent per year between 1980 and 1999 (U.S. Fish and Wildlife Service 2001), which is higher than the estimated population growth rate. Additionally, Langtimm *et al.* (unpubl. analysis) found evidence for a decline in adult survival in the Atlantic Stock in the latter part of a 16-year time period. This apparent trend is currently being studied further with other statistical methods (Langtimm, personal communication).

Numerous manatee protection measures are currently in place for the Atlantic Stock. Speed zones and/or restricted access areas have been established in Duval, Volusia, Brevard, Indian River, St. Lucie, Martin, Palm Beach, Broward, and Miami-Dade counties. We recently implemented Federal manatee protection areas at two sites in Brevard County, and the FWC has recently enacted new speed zones in Brevard and Indian River counties. MPPs have been approved by the FWC for Miami-Dade, Duval, Indian River and St. Lucie counties. We believe that manatee protection measures recently implemented by the FWC and us in the Atlantic Stock as well as the additional measures described below will reduce levels of incidental take in the Atlantic Stock to the negligible impact level.

In order to determine where additional mitigating measures need to be implemented, we have examined mortality trends within this Stock in an attempt to focus implementation of mitigating measures in those areas with continuing histories of high levels of watercraft-related incidental take. The analysis conducted by Flamm (2002) identified three primary manatee mortality concentration areas within the Atlantic Stock—(1) the Duval County area, (2) the Volusia-Brevard County area, and (3) Palm Beach-Broward County area. The best available information indicates that in order to reduce incidental take to a level that would have a negligible impact on this stock, mitigating measures must be focused in these areas.

Within regard to the Duval County area, the FWC approved the Duval County MPP in 1999, which includes speed zones, facility siting criteria, education, and enforcement components. We have determined that the configuration of the speed zones is minimally acceptable, and the recent decision by the County to improve signage of the zones on the St. Johns River will improve manatee protection in this area. Implementation of the Duval County MPP should reduce manatee mortality in this area. Shapiro (2001) observed a 56 percent compliance rate and a seven percent blatant non-compliance rate at a site in Duval County, indicating that additional mitigating measures in this area should include improved enforcement and boater education efforts.

Within the Volusia-Brevard County area, we believe that the newly enacted speed zones in Brevard County are adequate and appropriate, and given that Brevard County has historically been the area in the Atlantic Stock with the highest levels of watercraft-related mortality, the new Brevard County zones will substantially enhance protection of the Atlantic Stock. There is a continued high level of watercraft-related manatee mortality in portions of Volusia County, including the Halifax and Tomoka Rivers, and no recent actions have been taken to improve the speed zones in these areas. We believe additional protective measures are needed in these areas.

In addition to improvements in watercraft speed zones, it is likely that efforts are necessary to improve compliance with speed zone regulations. As noted above, Shapiro (2001) observed levels of compliance at sites within the Atlantic Stock that were below our above-stated compliance goal. As such, additional law enforcement and boater education efforts, focused within the above-described manatee mortality concentration areas (Flamm 2002) are considered to be appropriate and necessary mitigating measures to reduce watercraft-related incidental take within the Atlantic Stock.

We are continuously collecting and evaluating information regarding trends in watercraft-related mortality, and as new information becomes available, additional or different specific sites may be identified as being in need of additional protection. It is also possible that additional information could alter our views regarding the adequacy of protection measures in the above-identified areas. However, based on our current assessment of the best available information, implementation of the above-mentioned measures will be effective in reducing watercraft-related incidental take within the Atlantic Stock.

In regard to the review of applications to construct watercraft access facilities, as stated above the preferred method is through the development and implementation of county MPPs, and the use of the facility siting component of those plans to guide local, State, and Federal permit review processes. It is our view that MPPs should be developed and implemented for all counties where the watercraft-related manatee mortality rate for the preceding five years averages one or more manatees. Based on current data, this includes the following counties within the Atlantic Stock— Brevard, Broward, Duval, Indian River, Martin, Miami-Dade, Palm Beach, and Volusia. As noted above, MPPs have been approved by the FWC for Miami-Dade, Duval,

Indian River and St. Lucie counties. While development of MPPs for the above counties would be an appropriate, and indeed preferable mitigating measure with respect to the effects of watercraft access facilities, we have determined that it is not necessary to ensure that the effects of the authorized activities have a negligible impact on manatees, because until such plans are adopted the effects of watercraft access facilities on manatees and manatee habitat will continue to be assessed and reduced on a case-by-case basis through effective State and Federal regulatory processes, as described above.

In summary, the Atlantic Stock is close to the demographic benchmarks; however, watercraft-related take is high, and it appears that this level of watercraft-related incidental take may affect this stock's ability to continue to increase toward OSP. Based on this, we conclude that the current level of watercraft-related incidental take is having a greater than negligible impact on this Stock. However, with the continued implementation of existing effective measures along with implementation of the additional mitigating measures described above, we conclude that the total effect of watercraft-related incidental take will have a negligible impact on this Stock. Our analysis of historic levels of watercraft-related incidental take, levels of take anticipated during the five-year period, and the effectiveness of existing and additional measures indicates that the anticipated take during the five-year period will not significantly affect rates of recruitment or survival. Separate from our negligible impact determination, if the apparent recent decline in adult survival is confirmed and continues, it will inevitably lead to a population decline that would adversely affect the long term population trend and prevent the stock from maintaining itself within OSP; however, we conclude that with the continued implementation of existing effective measures along with implementation of the additional mitigating measures described above, the total effect of watercraft-related incidental take will not adversely affect the long-term population trend.

4. *Southwest Stock*—Adult survival for this Stock has been calculated to be 90.6 percent with a 95 percent confidence interval range from 86.7 to 94.4 percent (Langtimm *et al.* unpubl. analysis), based on data collected between 1994 and 2001. There are no reliable estimates of the percent of adult females at the winter sites that are accompanied by first or second-year calves, although we are working with our partners to collect these data. It seems reasonable to assume that the recruitment rate for the Southwest Stock is similar to or lower than observed for the Atlantic Stock. There are no estimates of the population trend for this Stock. However, based on the estimated adult survival rate, it is likely that this Stock is currently declining or is, at best, stable. It seems unlikely that the Southwest Stock is meeting any of the demographic benchmarks at this time, and based on the adult survival estimates, it appears as though considerable improvement will be needed in order to begin to move this Stock toward achieving the demographic benchmarks. Additionally, watercraft-related mortality has increased greatly in recent years. The average annual number of manatee mortalities attributed to watercraft during the past five years (1997 to 2001) was 34.2, compared to 19.0 for the previous five-year period (1992 to 1996), and the number of manatees killed by watercraft increased at a rate of 7.3 percent per year between 1976 and 2002, which is a likely cause of the stable or declining population trend. Further, given the susceptibility of this Stock to naturally occurring mortality events such as red tide, it is possible that this Stock is less capable than other stocks of sustaining itself in the face of high levels of human-related take.

Numerous manatee protection measures are currently in place within the Southwest Stock. Speed zones and/or restricted access areas have been established in portions of Hillsborough, Pinellas, Manatee, Sarasota, Charlotte, Lee, and Collier counties. We recently enacted Federal manatee protection areas at sites in Hillsborough, Pinellas, Sarasota, Charlotte, Desoto, and Lee counties, and the FWC has recently enacted new speed zones in Hillsborough, Manatee, Sarasota, Charlotte, and Desoto counties. A MPP has been approved by the FWC for Collier County. We believe that manatee protection measures recently implemented by the FWC and us for the Southwest Stock will reduce the rate of increase in the number of watercraft-related mortalities.

In considering where additional mitigating measures need to be implemented, we have examined mortality trends within this Stock in an attempt to focus implementation of mitigating measures in those areas with continuing histories of high levels of watercraft-related incidental take. The analysis conducted by Flamm (2002) identified one primary manatee mortality concentration area within the Southwest Stock (*i.e.*, the Charlotte, Lee, Collier County area). Additionally, review of mortality statistics indicate that the number of manatees killed by watercraft in the greater Tampa Bay area (Hillsborough, Pinellas, Manatee, and Sarasota counties) has increased rapidly in recent years. For the period between 1992 and 1996 an average of 4.6 manatees were killed by watercraft in the greater Tampa Bay area each year, whereas an average of 8.6 manatees per year were killed by watercraft between 1997 and 2001. It is our view that in order to reduce incidental take to a level that would have a negligible impact on the manatee, mitigating measures must be focused in these areas.

Within the greater Tampa Bay area, substantial efforts have been made to improve manatee protection by local governments, and recently by the FWC and us; however, large areas of these bays that are of importance to manatees remain unprotected. We understand that the FWC will begin to prepare a rulemaking proposal for Tampa Bay in the near future. It is our view that implementation of additional protection measures in Tampa Bay, Old Tampa Bay, and Hillsborough Bay are appropriate and necessary mitigating measures to reduce watercraft-related incidental take within the Southwest Stock.

Speed zones for manatee protection have been established only in very limited portions of Manatee County. There are no significant wintering sites in Manatee County. However, waters throughout the county receive considerable use by manatees; particularly Terra Ceia Bay, Anna Maria Sound, Sarasota Bay, the Manatee River and the Braden River. Recent enactment of speed zones in Terra Ceia Bay by the FWC will benefit manatees. It is our view that implementation of additional protection measures in Manatee County are appropriate and necessary mitigating measures to reduce watercraft-related incidental take within the Southwest Stock.

Within the Charlotte-Lee-Collier County area, the recent enactment of speed zones on Lemon Bay and the Peace River by the FWC and us will improve manatee protection in these areas. Additionally, the FWC is conducting a study of the Caloosahatchee River, which may lead to recommendations for improving manatee protection in this area. Additionally, the FWC will conduct a broader study of the existing speed zone rules in Lee County, and a study of the waters of the Ten Thousand Islands area of Collier County, which may lead to recommendations for addressing our concerns regarding the waters near

Bokeelia Point, the Ten-mile Canal, Mullock Creek, and Chokoloskee Bay. Finally, the National Park Service (NPS) intends to address manatee protection measures within Everglades National Park as part of their General Management Plan process. It is our view that implementation of additional protection measures in the above-identified waterbodies are appropriate and necessary mitigating measures to reduce watercraft-related incidental take within the Southwest Stock.

As new information becomes available, additional areas of importance to manatees may be identified as being in need of additional protection. It is also possible that additional information could alter our views regarding the adequacy of protection measures in the above-identified areas. However, based on our current assessment of available information, resolution of the above-mentioned deficiencies are considered to be appropriate and necessary mitigating measures to reduce watercraft-related incidental take within the Southwest Stock.

In addition to improvements in watercraft speed zones, efforts are necessary to improve compliance with speed zone regulations. As noted above, Shapiro (2001) and Gorzelany (1996, 1998, 2001) observed levels of compliance at sites within the Southwest Stock that were below our above-stated compliance goal. As such, additional law enforcement and boater education efforts, focused within the greater Tampa Bay area and the Charlotte-Lee-Collier County area are considered to be appropriate and necessary mitigating measures to reduce watercraft-related incidental take within the Southwest Stock.

In regard to the review of applications to construct watercraft access facilities, as stated above the preferred method is through the development and implementation of county MPPs, and the use of the facility siting component of those plans to guide local, State, and Federal permit review processes. It is our view that MPPs should be developed and implemented for all counties where the watercraft-related manatee mortality rate for the preceding 5 years averages one or more manatees. Based on current data, this includes the following counties within the Southwest Stock—Charlotte, Collier, Glades, Hillsborough, Lee, Manatee, Monroe, Pinellas, and Sarasota. As noted above, an MPP has been approved by the FWC for Collier County. We note that per the Florida Manatee Sanctuary Act MPPs are not currently mandated to be completed for all these counties and no MPPs are required to be completed before July 1, 2004. As such, the implementation of MPPs does not appear to be a mitigating measure that is likely to be implemented within the timeframe of this rule, and applications to construct watercraft access facilities will continue to be reviewed on a case-by-case basis through State and Federal regulatory processes.

As indicated above, there is a need for considerable improvement in the status of the Southwest Stock, and numerous measures are needed to bring about those improvements. It is our view that implementation of necessary mitigating measures is unlikely to occur within the timeframe (five years) necessary to reduce the effects of watercraft-related take to negligible levels per this proposed rule. As such, we conclude that the current level of human-related take of manatees is substantially increasing the time needed to achieve the demographic benchmarks and is having a more than negligible impact on this Stock, and incidental take of manatees cannot be authorized. This constitutes a negative finding pursuant to 50 CFR 18.27(d)(4). We further conclude that it is unlikely that the Stock will be able to achieve or maintain OSP levels over the near or long term under current levels of watercraft-related incidental take.

We will continue to work with our partner agencies and stakeholders to develop and implement measures to reduce incidental take within this Stock. Additionally, we will also continue to work with the scientific community to collect the data necessary to improve our assessment of the status of the Southwest Stock relative to the demographic criteria. It is possible that additional and/or improved data collection and analysis will result in stronger data sets with greater statistical confidence. We believe that if incidental take can be reduced and controlled, and the necessary population data is collected, it may become possible at a future date to promulgate regulations authorizing incidental take in this region. We will continuously monitor the status of this Stock relative to the benchmarks, and will propose incidental take regulation as soon as we determine that incidental take within this Stock has been reduced to a negligible level, or could be reduced to a negligible level through implementation of mitigating measures. This could occur at any time during the five-year period of this rule, or in subsequent rulemakings.

Monitoring and Reporting

Reducing and controlling the incidental take of manatees at a level that would have a negligible impact on the species requires active participation of all stakeholders, including boaters, marine manufacturers and industry, government agencies, and the general public. In order to provide all parties a continuing role in this process and implementation of this rule, we propose to establish a Working Group on Watercraft-related Incidental Take (WGWIT).

The WGWIT will be organized as a sub-committee of the Florida Manatee Recovery Team, similar to what has been done with the Habitat Working Group and the Warm Water Task Force. The composition of the WGWIT will have representation from the Florida Manatee Recovery Team and participants from each of the following parties/stakeholders—recreational power boaters, personal watercraft operators, non-motorized boating groups, commercial fishermen, fishing guides, recreational fishing organizations, marine manufacturers, marina owners, environmental advocates, consultants and each government agency obtaining an LOA from us per the final rule. WGWIT members will serve without compensation. Through this notice we are requesting suggestions on groups that should be included in the WGWIT and nominations of persons interested in serving on this panel. Nominations for the WGWIT should be submitted as part of the comments to this proposed rule. Comments are due on the date stated above in **DATES**, and you should refer to the **ADDRESSES** section of this proposed rule on how to submit comments. Based upon the nominations, we will send out invitations for participation in the WGWIT in late January 2003.

Once the final rule is in effect, the WGWIT will meet regularly (twice yearly) to assist in evaluating the effectiveness of the mitigating measures in reducing incidental take of manatees. Based upon these evaluations, the WGWIT will make recommendations to us regarding means of improving the effectiveness of existing mitigating measures, elimination of ineffective or unnecessary mitigating measures, and additional mitigating measures that may be necessary, and will advise the Service on needs related to research and monitoring. Recommendations from the WGWIT will be non-binding on our actions, but will be given strong consideration in the implementation of the incidental take regulations.

We also intend to form a Law Enforcement Committee under the WGWIT, comprising of the Federal, State and local entities involved with

the (1) design, location, installation, and/or maintenance of signs, (2) enforcement of speed zone and restricted access regulations, and (3) prosecutorial discretion to take action against violators. We envision this committee to include representatives from the Service (Ecological Services and Law Enforcement), FWC (Bureau of Protected Species Management and Law Enforcement), FDEP, Corps, USCG, Inland Navigation Districts, and the U.S. Attorney's Office. The Law Enforcement Committee would be tasked with development of a statewide violation tracking system as well as a uniform profile and fine structure. The committee would also assist researchers and managers in the identification and prioritization of manatee protection areas for targeted compliance monitoring and enforcement. We believe improved coordination among law enforcement entities will result in improved compliance and improved manatee protection overall.

The monitoring and reporting requirements associated with this rule are intended to enable us to track agency compliance with the terms and conditions of issued LOAs, and to evaluate observed levels of incidental take against the negligible impact threshold. We intend to integrate information received through these requirements with current and future research efforts in order to evaluate the effectiveness of mitigative measures with a view toward refining measures to improve results, and to identify and fill data gaps in order to improve future decision-making.

Monitoring efforts for each of the five categories of mitigating measures will be structured as follows. We anticipate improvement of these efforts as information is gathered and the WGWIT has the opportunity to evaluate the monitoring methods and standards.

1. *Watercraft Speed Regulations*—We, in coordination with the FWC and other LOA holders, will evaluate areas of manatee habitat, with or without designated watercraft speed zones and restricted access areas, to determine if an adequate system of protective measures has been established. The evaluation would include, but not be limited to, carcass retrieval information/annual mortality statistics, aerial surveys, speed zone compliance, mapping quantity and quality of important habitat features (*e.g.*, warm water refugia, fresh water sources, seagrass beds, etc.), and the status of the development or implementation of facility siting plans.

2. *Enforcement*—To monitor the level of compliance in designated speed zones and restricted access areas, we propose the use of the methodology developed by Mote Marine Laboratory (Gorzelany 1996 and 1998).

For each site to be monitored, a land- or water-based observation area should be chosen to provide the observer with a vantage point that also allows discreet observation so as not to influence speed or behavior of watercraft operators utilizing the site. At each site, three 2-hour observation periods per month should be conducted and include two weekend days (Saturday and Sunday) and one weekday (Monday-Friday). For the purposes of this rule, the duration and time of year of monitoring will be site specific and determined by several factors, including but not limited to, peak season(s) of manatee use in relation to peak season(s) of watercraft use, historic and present level of watercraft-related manatee mortality, proximity to winter aggregation site or other important habitat features, and seasonality, if any, of the manatee protection area. Each site should be sampled equally among three different 2-hour time windows: 0800–1000 hours, 1100–1300 hours, and 1400–1600 hours. For each observation day, the observer(s) should record the weather, wind, wave, and boating conditions for each site. For each watercraft observed, the observer(s) should record the time, vessel type, vessel size, activity the vessel is engaging in, origin, destination, vessel speed, evaluation of compliance, and any additional comments. Gorzelany (1996) provides a detailed description of the categories and definitions of the data to be collected as well as an example of a data collection sheet. Data should be compiled and analyzed consistent with Gorzelany (1996 and 1998) in order to have meaningful, comparable results throughout the state.

3. *Watercraft Operator Education/Awareness*—Monitoring of education/awareness efforts would be accomplished by LOA holders through participant evaluation forms included in education packages for watercraft operator safety programs as well as programs designed for the general public and schools. Periodic surveys of the public at large should also be developed through the WGWIT and administered in a random, statewide study to determine the overall effectiveness of manatee education and outreach.

4. *Watercraft Access Facility Siting*—The FWC's BPSM currently tracks and reports on the status of county MPPs. In addition, LOA holders who permit watercraft access facilities will be required to report the numbers and types of watercraft access facilities authorized each year by water body, as well as other relevant information including permit conditions and permit denials.

Each agency receiving an LOA will be required to submit a report of all activities conducted pursuant to the LOA annually. The specific reporting requirements, including which activities must be reported and the level of detail necessary for reporting, will depend on the specific activities for which each agency seeks an LOA, and will be specified in the LOA.

Research

On-going and additional research activities will provide additional information for implementation of this rule and development of future rules and conservation efforts. These include, but are not limited to, the following—continued efforts to gather data on survival rates for the various life stages and the reproductive rates defined in the population model; continued and expanded efforts to assess the effectiveness of watercraft speed zones as tools for reducing watercraft-related incidental take; expanded research on the effects of speed zones and watercraft access facility siting on boater behavior and travel patterns; continued and expanded monitoring of compliance with posted speed zones; and continued research into development of technologies to reduce manatee/watercraft interactions. These and future studies will be used to further evaluate and modify this process through time. Additionally, this research may help us make future findings for the Southwest Stock, as mentioned above.

Proposed LOA Process

The proposed regulations have been designed to identify the appropriate mitigation, monitoring, and reporting requirements to be detailed in the LOA, rather than in these regulations. This has been done because of the variable scope of authority, area of responsibility, and activities engaged in by the potential LOA applicants, and because appropriate measures need to be tailored to particular areas. Mitigating measures identified above as appropriate and necessary to ensure the effects of watercraft-related activities have a negligible impact on manatees must be in place before incidental take authorization can be granted.

Additional mitigating measures are not required for the Northwest and Upper St. Johns River stocks beyond those actions currently being taken by local, State, and Federal agencies; therefore, we anticipate that as long as

applicants for LOAs commit to continue to engage in their current efforts to conserve manatees and to minimize the potential adverse affects of their activities on manatees, and these stocks continue to meet or exceed the demographic criteria, incidental take can be authorized. In the Atlantic Stock, however, those government agencies that have the necessary authority and resources will need to work with us to implement the appropriate mitigating measures in order to achieve negligible impact. Without their participation, other parties will not be able to receive authorization for incidental take within this Stock. Participation by other LOA holders will help reduce levels of take, but individually we do not believe that smaller government agencies can implement mitigative measures necessary to reduce watercraft-related manatee mortality to the negligible level within the Atlantic Stock.

In regard to local governments, most of the activities engaged in by local governments with respect to this rule are conducted under the purview of the State. For example, local MPPs and associated speed zones are approved by the FWC, and watercraft facility siting plans are incorporated into county comprehensive plans per the Department of Community Affairs. As such, should the State of Florida seek and receive an LOA that addresses incidental take related to their oversight of such local government activities, separate LOAs would not be needed by the counties.

No incidental take is authorized until LOAs are issued. Where there is the likelihood of taking Florida manatee, the entities who conduct activities described in the Specified Activities section may request an LOA. The proposed regulations require those who request an LOA to submit (1) a description of the specific activity or class of activities that can be expected to result in the incidental take of manatees; (2) the dates and duration of such activity and the specific geographical region where it will occur; (3) the anticipated impact of the activity on manatees (*i.e.*, death, injury, harassment, etc.); (4) the anticipated impact of the activity to manatee habitat and the likelihood of restoration of the affected habitat; (5) the anticipated impact of the loss or modification of manatee habitat; (6) the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact on the manatee and its habitat; (7) suggested means of accomplishing the necessary monitoring and reporting; and (8) suggested means of encouraging and coordinating research opportunities, plans, and activities to reduce such incidental take.

Each request for an LOA will be evaluated for the specific activity and the specific area for which authorization of incidental take is requested, and we will specifically condition each LOA for that activity and area. LOAs will be valid for one calendar year from the date of issuance, with re-authorization contingent on the submission of required report(s), including but not limited to, the status of implementation of LOA conditions and results of required monitoring. We will withdraw or suspend an LOA if we find that either the LOA or regulations are not being substantially complied with or that the authorized level of take is having or is likely to have more than a negligible impact on the Florida manatee (50 CFR 18.27(f)(5)). We anticipate that in the event that an LOA holder is not substantially complying with the conditions of an LOA in a manner that leads to incidental take that is or is likely to be higher than the negligible impact level for the stock for which incidental take is being authorized, all LOAs issued may have to be suspended or withdrawn. Except in emergency situations where we have determined that there is a significant risk to the well-being of the Florida manatee, suspension or withdrawal of LOAs will not occur prior to notice and opportunity for public comment.

Public Comments Solicited

We intend that any final action resulting from this proposal will be based on the best available information. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule.

We welcome any and all suggestions, materials, and recommendations to assist and guide us in this endeavor. Specifically, we are seeking:

1. Information regarding manatee population studies/data, particularly for the Southwest Stock;
2. Information regarding measures, including technological measures, that would result in the least practicable impact on manatees and their habitat;
3. Information regarding the effectiveness of mitigating measures currently in place;
4. Information regarding the potential social and economic effects of the proposed regulations;
5. Information regarding means of minimizing potential social and economic effects of the negative finding for the Southwest Stock;
6. Suggested means and measures to report and monitor the effects of incidental take on manatees;
7. Suggested additional research efforts related to the findings of this rule; and
8. Nominations for participants to serve on the Working Group on Watercraft-related Incidental Take.

Additionally, we are requesting specific public comment on the following issues pertaining to the economic analysis, which is printed in its entirety in the EIS for this action:

1. Information to better model the change in boater behavior and/or the economic surplus impacts of changes in marine access;
2. Additional estimates of the difference in residential property values with and without the potential to construct private boat dock;
3. Information to estimate the number and regional distribution of boaters in Florida who register their boats out-of-state; and
4. Alternative regional impact models (*i.e.*, alternatives to IMPLAN) that would more accurately capture changes in sector outputs and employment resulting from the rule.

Please submit comments as a DOS text file format and avoid the use of special characters and encryption. Please also include ''Attn—RIN 1018–AH86'' and your name and return address in your email message. If you do not receive a confirmation from the system that we have received your email message, contact us directly by calling the Jacksonville Field Office (see **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their name and home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearings

The MMPA provides for one or more public hearings on this proposal, if requested. Requests must be filed within

30 days of the date of this proposal. We have scheduled six public hearings for this proposal (see **DATES** and **ADDRESSES** sections). We will hold additional public hearings at dates, times, and sites to be determined, if requested. Requests for additional hearings must be made in writing and should be addressed to the Field Supervisor, Jacksonville Field Office (see **ADDRESSES** section). We will publish a separate notice in the **Federal Register** providing information about the time and locations of those hearings. Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

Clarity of Rule

Executive Order (E.O.) 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to—Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to the following address—*Execsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

Under EO 12866 (58 FR 51735), we must determine whether this proposed regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the EO. The EO defines ''significant regulatory action'' as one that is likely to result in a rule that may—(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user transfer fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in EO 12866. In accordance with the criteria in EO 12866, this rule is a significant regulatory action. OMB makes the final determination under EO 12866.

a. This proposed rule will not have an annual economic impact of over $100 million, but may adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A complete analysis is available in ''Alternative 3—Socioeconomic Impacts'' in the Draft Environmental Impact Statement for this proposed rulemaking.

Regulatory impact analysis requires the comparison of expected costs for each alternative against a ''baseline,'' which typically reflects the regulatory requirements in existence prior to the rulemaking. The baseline being considered in this analysis assumes that the Service takes no regulatory actions to protect the manatee. In fact, existing requirements to protect the manatee do exist, and currently impose costs on the regulated community. We were not, however, able to monetize the current level of regulatory burden. Thus, the cost estimates presented below represent a conservative (i.e., more likely to overstate as opposed to understate) estimate of the costs of this rule. That is, the rule being proposed will, in some cases, result in the continuance of costs experienced in the past (i.e., no change in regulatory burden), in some cases a reduction in these costs (i.e., will reduce overall regulatory burden), and in some cases an increase in the current cost of regulation.

The purpose of this proposed rule is to authorize where appropriate the incidental, unintentional take of small numbers of Florida manatees resulting from government activities related to watercraft and watercraft access facilities in Florida. This rule may lead to actions designed to reduce the watercraft-related take of manatees, including designating and enforcing manatee protection areas, managing manatee habitat, and promoting manatee related research and education and outreach. The rule may also be associated with changes to permit review procedures. These actions are undertaken to protect and enhance Florida's manatee populations.

The associated economic impacts are due to the implementation of MMPA incidental take regulations and any ancillary changes in permit review procedures. The analysis estimates the economic impact for the five-year duration of the proposed rule for four Florida stocks of manatee: Northwest, Upper St. Johns, Atlantic, and Southwest. Under the proposed rule, incidental take of manatees would be authorized in the Northwest, Upper St. Johns and Atlantic stocks. As the level of take is already meeting the negligible standard in the Northwest and Upper St. Johns stocks, no mitigating measures would be required for these stocks. The only impacts in the Northwest and Upper St. Johns stocks would be related to increased administrative activities associated with issuing Letters of Authorization (LOAs). In order to authorize incidental take in the Atlantic Stock, some mitigating measures would be implemented. The socioeconomic impacts associated with these mitigating measures are likely to be minimal. However, the inability to authorize incidental take in the Southwest stock may continue the substantial economic effects of limiting the authorization and construction of boat docks, marinas, boat ramps, and other watercraft access facilities.

The economic effect of the proposed rule, including the economic effect associated with the inability to authorize incidental take under this rule for the Southwest stock and any associated changes in permit review procedures, will most likely be manifested in three ways. First, there will be a continuation of administrative costs associated with various manatee protection and management measures. Second, there will be a reduction in the economic value of some waterfront properties, reflecting the loss in opportunity for marine access associated with residential development. The effect will be borne by individual property owners (in terms of a reduction in the value of their asset), but it is equivalently a welfare loss to society, reflecting a reduction in the value of services potentially provided by coastal properties. This category of impact is estimated by considering available data on the difference in waterfront property prices for properties with marine access versus waterfront property without marine access. Third, there will be a reduction in the supply of marine access. This change in supply will be expressed in terms of fewer boat ramps, marina slips and residential slips than would exist in the baseline (i.e., in the absence of

limitations on permitting of these facilities). The result of this reduction in marine access will be a price effect; that is, the cost of access to marine waters for all users will rise. This price impact will likely be felt by users in the form of higher rental rates for marina facilities, higher prices for commercial ramp facilities, longer wait times at ramp facilities, and/or the need for boaters to travel farther to obtain marine access. Because data do not exist to estimate these expected price effects, this analysis uses proxy measures of economic impact, by assuming that some boaters will choose not to boat in response to the change in marine access.

Because the analysis predicts the construction of fewer marine access facilities (residential docks, commercial marina slips, boat ramps), it is also expected that there would be a secondary effect in the form of a reduction in output (and jobs) in the marine construction sector from the level that would be expected in the baseline. In addition, because the analysis predicts fewer overall boating trips by Florida boaters, there will be a reduction in the economic output (and jobs) in industries that supply goods and services to marine boaters.

The economic impacts discussed in this analysis are incurred due to restricting permits on marine access facilities in the Southwest stock. Based on analysis of historical permitting activities, we assume that the Service will not concur with 37 percent of permit applications for development activities (i.e., boat docks, marinas, boat ramps) in manatee habitat areas in the Southwest stock. Associated costs are due to (1) continued administration of manatee protection programs, (2) diminishment of recreational boating opportunities due to limits on access to the water, (3) reduced waterfront property values, (4) decreased recreational boating expenditures, and (5) reduced marine construction. The impacts include both economic efficiency (i.e., social welfare) changes and distributional impacts (i.e., changes in regional economic performance, in the form of reductions in economic output and jobs from the baseline). All impacts are summarized in Tables 1 and 2.

TABLE 1.—SUMMARY OF EFFICIENCY (ECONOMIC SURPLUS) LOSSES

[Millions of 2001 dollars]

	Nominal impacts					Discounted impacts		
	Year 1	Year 2	Year 3	Year 4	Year 5	Present value total 3%	Present value total 7%	Annualized 7%
Northwest	$0	$0	$0	$0	$0	$0	0	$0
Upper St. Johns	0	0	0	0	0	0	0	0
Atlantic	0	0	0	0	0	0	0	0
Southwest	18–25	20–35	21–44	23–53	25–62	97–198	87–175	21–43
Subtotal	18–25	20–35	21–44	23–53	25–62	97–198	87–175	21–43
Administrative costs[a]	10	10	10	10	10	48	43	10

[a] Sufficient data do not exist to allow administrative costs to be reported by stock.

TABLE 2.—SUMMARY OF DISTRIBUTIONAL (REGIONAL ECONOMIC EFFECTS) IMPACTS

[Millions of 2001 dollars]

	Nominal impacts				
	Year 1	Year 2	Year 3	Year 4	Year 5
Northwest Reduction in economic output	$00–$00	$00–$00	$00–$00	$00–$00	$00–$00
Reduction in jobs	0	0	0	0	0
Upper St. Johns Reduction in economic output	$00–$00	$00–$00	$00–$00	$00–$00	$00–$00
Reduction in jobs	0	0	0	0	0
Atlantic Reduction in economic output	$00–$00	$00–$00	$00–$00	$00–$00	$00–$00
Reduction in jobs	0	0	0	0	0
Southwest Reduction in economic output	$14–$24	$15–$36	$17–$47	$18–$59	$20–$70
Reduction in jobs	147	170	193	217	240
Subtotal Reduction in economic output	$14–$24	$15–$36	$17–$47	$18–$59	$20–$70
Reduction in jobs	147	170	193	217	240

[a] Distributional impact estimates reflect the expected change in regional economic output and jobs; these measures should not be summed with reported efficiency (surplus) effects, but viewed as separate measures of economic impact.

The inability to authorize incidental take for the Southwest stock under the proposed rule is expected to result in present value economic surplus losses of approximately $87 to $175 million over five years (assuming a seven percent discount rate), or $21 to $43 million per year (annualized to 2001). Between 40 and 75 percent of these losses are associated with the expected reduction in waterfront property values. The principal source of uncertainty in these estimates is the lack of a model to estimate boaters' responses to a change in the supply of marine access facilities.

In addition, it is expected that the inability to authorize incidental take for the Southwest stock under the proposed rule will result in a reduction in economic output and employment in each of the five years. The impact ranges from approximately $14–$24 million and 147 jobs in year one, to

approximately $20–$70 million and 240 jobs in year five. The majority of the reduction in economic output in year five is associated with a decrease in recreational boating trips in the Southwest region, in the high end estimate. Again, the principal source of uncertainty in these estimates is the lack of information on the likely behavior of marine boaters in response to a change in the supply of marine access.

It is important to recognize the uncertainty inherent in the assumptions underlying this analysis. There are a number of factors that may lead this analysis to under- or overestimate economic losses. In addition to the sources of uncertainty discussed above, we may understate economic losses based on the following assumptions.

- The analysis does not account for growth in Florida boaters who register their boats out-of-state.
- Historical residential permitting rates are assumed to continue into the future. This assumption may lead us to understate economic losses resulting from permitting restrictions associated with the inability to authorize incidental take for the Southwest stock.

In addition, we may overstate economic losses, for the following reasons.

- The analysis assumes demand for watercraft access facilities is not going to be met in certain areas due to permitting restrictions associated with the inability to authorize incidental take for the Southwest stock under the rule (*i.e.*, that there is no excess marina and boat ramp capacity currently). These assumptions may lead us to overstate economic losses.
- The model used to estimate regional economic impacts is a static model, and thus does not account for adjustments by the economy following regulatory or other changes. That is, this model measures the effects of a specific policy change at one point in time. Over the long-run, the economic losses predicted by the model may be overstated as adjustments such as re-employment of displaced workers occurs.
- The analysis calculates surplus loss for residential property owners who are unable to build a dock on their property, as well as surplus losses associated with property value impacts. This may result in some degree of double counting of regulatory costs.

In addition to the caveats noted above, our analysis does not take into account any economic benefits. For example, there may be economic benefits related to reduced congestion on the water and avoided costs for maintaining shoreline protection.

Administrative Costs. Administrative costs statewide over the next five years are associated with the development and enforcement of manatee protection areas ($19 million), agency administrative efforts ($15 million), education and outreach ($3 million), permitting efforts ($4 million), and additional impacts ($11 million). These would be costs incurred by Federal, State and other agencies.

Efficiency (Economic Surplus) Losses. The inability to authorize incidental take for the Southwest stock may limit authorization and construction of watercraft access facilities, causing economic impacts to waterfront property owners by impacting recreational boating activities and waterfront property values. Some homeowners who would otherwise have constructed residential dock facilities on their properties in the Southwest stock will be unable to obtain required permits, thus affecting their recreational boating activities and their property values.

Recreational boating will be impacted based upon the assumption that these homeowners would instead rent slips at an existing marina facility. Welfare losses incurred by waterfront homeowners are associated with marina rentals and the time and effort spent to travel to the marina. We estimate that, cumulatively over the five-year period, unmet residential slip demand would result in demand for 10,600 marina slip rentals in the Southwest region. Using the range of annual wet and dry marina slip rental costs (from $1,500 to $4,600 per slip per year) yields a five-year welfare loss between $13 to $38 million (2001 dollars with a seven percent discount rate).

The inability to authorize incidental take for the Southwest stock under the proposed rule would also impact property values for some waterfront property owners. Property owners who would otherwise have been able to construct residential docking facilities would experience a reduction in their property's value. To estimate this loss, we assume that a residential boat slip adds approximately $68,000 to the value of a waterfront property in Florida. Using the number of waterfront property owners that would not be able to construct a residential slip (236 annually), we estimate the economic cost to be $66 million over five years (2001 dollars with a seven percent discount rate).

Existing data indicates that marina facilities currently have capacity to handle some increase in slip rental demand without new construction, but this capacity will not address all of the expected demand for slips over the five-year period of the rule. Thus, boat owners who otherwise would utilize marina facilities or boat launches may be unable to access these facilities.

This analysis assumes that, as demand for watercraft access increases, some boaters will be unable to obtain access, and thus the total number of boat trips originating from marinas will decrease. To estimate welfare losses to these boaters over the five-year period, we apply the willingness to pay for a boating day ($40), multiplied by the cumulative future unmet marina slip demand (*i.e.*, 4,500 slips) and the average number of boating trips taken per year (60 trips/year). Discounting these figures using a seven percent discount rate, the welfare loss over the five-year period is estimated to be $8 million (2001 dollars).

Due to the inability to authorize incidental take for the Southwest stock under the proposed rule, it is assumed that the Service would not concur with 37 percent of permit applications for the construction of new boat ramps, resulting in an increased demand for existing boat ramp facilities. This demand for existing boat ramp facilities in the Southwest region will likely exceed supply in the next five years. As boat ramp congestion increases over time, boaters may decide not to use a boat ramp to launch their vessel, and may choose to refrain from boating. Similar to our estimate of losses to marina users, we estimate welfare losses to boat ramp users based on information on projected growth in boat ramp usage, and estimates of boating values and boating trips per year. Because we lack data on boat ramp capacity, we provide a range of surplus loss estimates based on assumptions about the lost number of boating trips attributable to the proposed rule. The low end is zero while the high-end represents the maximum possible surplus loss by assuming that some boat ramp users (equal to the number to newly registered boats expected to use ramps) choose not to participate in boating activities. This high end assumption likely overestimates the actual surplus losses. Applying the value for a day of boating ($40) to the five-year cumulative reduction in boat ramp trips (ranging between zero and two million), we estimate the welfare loss for boat ramp users for the Southwest region. When these figures are discounted using a seven percent discount rate, the welfare loss over the five-year period ranges from $0 to $62 million (2001 dollars).

Marine Industry Impacts. The inability to authorize incidental take for the Southwest stock under the proposed

rule would likely lead to two categories of indirect impacts. First, a loss of marine access points would result in a decrease in recreational boat trips for marina users and boat ramp users. This decrease in boating activity may lead to a reduction in expenditures related to recreational boating. Second, a limit on the authorization and construction of such facilities as boat docks, marinas, and boat ramps is likely to result in a reduction in the demand for marine construction services.

This analysis assumes that the inability to authorize incidental take for the Southwest stock under the proposed rule will lead to a reduction in recreational boating activity, equal to 132,000 trips accumulating per year from boat ramps and 18,000 trips accumulating per year from marina slips. The decrease in trips from boat ramp users will result in an estimated annual decrease in direct expenditures ranging from $6 million in year one to $32 million in year five, and a regional economic impact ranging from $10 million in year one to $51 million in year five. The decrease in trips from marina slip users will result in an estimated annual decrease in direct expenditures ranging from $1 million in year one to $4.3 million in year five, and a regional economic impact ranging from $1 million in year one and $7 million in year five for marina slip users (2001 dollars).

In addition to impacts from reduced recreational boating activity, marine industry would also be impacted by the reduced demand for marine construction. Applying the cost of building docks, marina slips, and boat ramps to the projected unmet demand for these marine access facilities in the Southwest stock, we estimate the total revenue likely to be lost to the marine construction industry to be $7 million annually. This decrease in marine construction would lead to a regional impact of $13 million annually for five years.

b. This rule will not create inconsistencies with other agencies' actions. The Service will continue to work with State and local agencies to monitor and evaluate the need for incidental take regulations. The Service recognizes the important role of State and local partners, and the Service continues to support and encourage State and local measures to improve manatee protection. Furthermore, the Service will be able to issue LOAs covering agency activities in the Northwest, Upper St. Johns, and Atlantic stocks. The application process will likely only cause minimal impacts on applicant agencies.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are restrictions to existing human uses of the proposed sites as a result of this rule, but the restriction is not expected to have a material effect.

d. This rule will not raise novel legal or policy issues. This proposed action will reduce the need for enforcement actions to prevent the takings of manatees by harassment resulting form human-related waterborne activities in the Northwest, Upper St. John, and Atlantic stocks. Within the Southwest stocks, there will be a lack of incidental take regulations. However, property owners already experience a variety of county and Federal development restrictions due to numerous other regulations including: the Endangered Species Act, National Historic Preservation Act, Coastal Zone Management Act, Magnuson-Stevens Fishery Management and Conservation Act, Fish and Wildlife Coordination Act, and the Marine Mammal Protection Act.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. A ''substantial number'' of small entities is more than 20 percent of those small entities affected by the regulation, out of the total universe of small entities in the industry or, if appropriate, industry segment.

SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR part 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000.

We certify that this rule would not have a significant economic effect on a substantial number of small entities as defined under the RFA Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Marine Recreation Impacts. As noted in the previous section, reduced recreational boat trips could lead to an estimated $4 to $36 million decrease in direct expenditures, which would yield a regional economic impact to the Southwest stock between $7 to $58 million annually for five years. Expenditures that would be affected would be for food and lodging, transportation, and other incidental expenses. The table below describes the total business activity for these sectors in the Southwest stock. Sales in these sectors total to $7 billion. Pinellas and Hillsborough counties account for the largest proportion of the sales while Glades and De Soto counties account for the smallest proportion. The decreased recreational boating expenditures ($4 to $36 million) would represent less than one percent of the region's total sales in these sectors.

TABLE 3.—AFFECTED ESTABLISHMENTS IN THE AFFECTED COUNTIES IN FLORIDA—1997

[Includes NAICS codes 451 and 72] [1]

Counties	Total sales (thousands of 2001 dollars)	Total establishments	Establishments with less than 10 employees
Southwest	$6,842,646	8,271	4,699
Manatee	298,331	438	255
Sarasota	593,332	798	441
Pasco	302,965	495	307
Pinellas	1,727,750	2,233	1,314
Hillsborough	1,574,791	1,774	939
Lee	844,625	934	517
Collier	649,629	603	353
Charlotte	155,756	252	138
De Soto	13,335	35	18
Glades	5,047	20	14
Hendry	19,781	48	33
Monroe	657,304	641	370

[1] NAICS 451—Sporting Goods. NAICS 72—Food and Accommodation.
Source: U.S. Census Bureau, 1997.

Marine Construction Impacts. In 1997, Construction in Building, Developing, and General Contracting (NAICS 233) in Florida accounted for $25.5 billion (1997 $) in gross sales, 10,130 establishments, and 77,238 employees.[1] Because county-level data is not published for Construction, it is difficult to assess the direct effect on individual businesses due to decreased marine construction. However, using IMPLAN, we can calculate the change in net employment (Table 4). The impact in the Southwest stock would be a reduction of approximately $13 million in economic activity, which would result in a reduction of approximately 123 jobs. Within the construction sector, the decrease in the Southwest stock represents less than one percent of gross sales and less than one percent of employees in the State of Florida.

TABLE 4.—ANNUAL REGIONAL ECONOMIC IMPACT OF A REDUCTION IN BOAT DOCK, MARINA, AND SLIP CONSTRUCTION EXPENDITURES ON SOUTHWEST STOCK

	Decrease in regional output (millions of 2001 dollars)	Decrease in regional employment (persons)
Initial Expenditures	$6.9	46
Indirect Impact	2.9	37
Induced Impact	2.8	40
Total Impact	12.6	123

Small Business Regulatory Enforcement Fairness Act

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

a. Will not have a significant impact on a substantial number of small entities. As shown above, the inability to authorize incidental take for the Southwest stock under this proposed rule may decrease recreational boating expenditures and marine construction with a direct impact estimated between $11 to $43 million per year (2001 dollars), resulting in a total regional economic impact between $20 to $70 million per year. The cost of the inability to authorize incidental take for the Southwest stock under this rule for businesses both small and large would be dispersed across Southwest Florida. The Small Business Administration defines a ''small business'' as one with annual revenue that meets or is below the established size standard, which is $29 million for NAICS 23 Construction, $6 million for NAICS 451 Sporting Goods, and $6 million NAICS 72 Food and Accommodation. An unknown portion of the establishments shown in Table 3 could be affected by this rule. In Table 3, over half of the establishments have less than 10 employees. If the expenditure impact ($11 to $43 million) were evenly distributed across the affected establishments, gross sales at each would reduced by up to $9,200. If an establishment has gross sales of $500,000, the inability to authorize incidental take for the Southwest stock under this proposed rule would impact the gross sales by just 1.8 percent. Thus, we do not expect the impact to be significant.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforseen changes in costs or prices for consumers stemming from this proposed rule. This proposed rule will have an effect on the costs of recreational boating. However, the Service believes that it is unlikely that an increased cost of slip rentals or boat ramps will result in a significant economic effect. Based on an analysis of public comment, further refinement of the impact on this industry may be possible.

[1] Source: U.S. Census Bureau.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. As stated above, the inability to authorize incidental take for the Southwest stock under this proposed rule may result in a loss of jobs due to decreased marine construction. The total impact would be less than a one percent job reduction in Florida's construction sector.

Energy Supply, Distribution or Use (EO 13211)

On May 18, 2001, the President issued EO 13211 on regulations that significantly affect energy supply, distribution, and use. EO 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions.

In accordance with EO 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' the Service asserts that this rule is not likely to have a significant adverse effect on the supply, distribution or use of energy. This rulemaking to authorize incidental and unintentional take of Florida manatees by U.S. citizens engaged in specific activities within certain geographic areas, does not impact the Nation's energy resources. This rulemaking does not affect areas having oil or gas reserves, whether in production or otherwise identified for future use.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The development of incidental, unintentional take regulations for government activities related to watercraft and watercraft access facilities within certain geographic areas of the species' range in Florida for a period of not more than five years, pursuant to the MMPA, imposes no new obligations on State or local governments.

Takings

In accordance with EO 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule does not have significant takings implications. A takings implication assessment is not required. Any property owners will have navigational access and the opportunity to maintain property.

Federalism

In accordance with EO 13132, this rule does not have significant Federalism effects, therefore a Federalism assessment is not required. This rule does not require or mandate the State or any other government entities to apply for an LOA; therefore, it will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. As discussed earlier, and in keeping with Department of the Interior policies, we coordinated with the State of Florida to the extent possible on the development of this proposed rule.

Civil Justice Reform

In accordance with EO 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to develop incidental, unintentional take regulations for government activities related to the operation of watercraft and watercraft access facilities within certain geographic areas of the species' range in Florida for a period of not more than five years, pursuant to the MMPA.

Paperwork Reduction Act of 1995

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is required because we do not anticipate that more than ten agencies would apply for an LOA.

National Environmental Policy Act

The Service has determined that it is necessary to prepare an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 (NEPA). On June 10, 2002 (67 FR 39668), the Service announced intent to prepare an EIS to evaluate the effects of authorizing the incidental, unintentional take of small numbers of Florida manatees within certain regions of Florida. Pursuant to the MMPA, the Service is in the process of developing incidental take regulations for government activities related to the operation of watercraft and watercraft access facilities within three geographic areas of the species' range in Florida for a period of not more than five years. The public comment period on the notice of intent to prepare an EIS ended on July 25, 2002.

Endangered Species Act

We will be conducting an intra-service consultation under section 7 of the ESA on this action. The consultation will be concluded prior to a determination on issuance of a final rule.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), EO 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands essential for the conservation of the Florida manatee; therefore, proposing to develop incidental take regulations for government activities related to the operation of watercraft within certain areas of the species' range in Florida, will not adversely affect Tribal lands.

Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The purpose of EO 12906, signed on April 11, 1994, is to bring attention to the need for accurate geographic information. This information is critical to promote economic development, improve stewardship of natural resources, and protect the environment. Modern technology now permits improved acquisition, distribution, and utilization of geographic (or geospatial) data and mapping.

The National Performance Review has recommended that the executive branch develop, in cooperation with State, local, and tribal governments, and the private sector, a coordinated National Spatial Data Infrastructure to support public and private sector applications of geospatial data in such areas as transportation, community development, agriculture, emergency response, environmental management, and information technology. The Federal Geographic Data Committee, established by the Office of Management and Budget and chaired by the Secretary of the Department of the Interior or the Secretary's designee, shall coordinate the Federal Government's development of the National Spatial Data Infrastructure.

References Cited

A complete list of all references cited in this proposed rule is available upon

request from the Jacksonville Field Office (see **ADDRESSES** section).

Author

The primary authors of this document are Pete Benjamin (904/232–2580, extension 106), and Stefanie Barrett (904/232–2580, extension 114), (see **ADDRESSES** section).

Authority

The authority to establish regulations that would authorize for the next five years the incidental, unintentional take of small numbers of Florida manatees is provided by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as follows.

PART 18—MARINE MAMMALS

1. The authority citation for part 18 continues to read as follows:

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

2. Add subpart K to read as follows:

Subpart K—Taking of Florida Manatees Incidental to Government Activities Related to Watercraft Operations and Watercraft Access Facilities in Florida

Sec.

18.131 What specified activities does this subpart cover?
18.132 In what specified geographic region does this subpart apply?
18.133 When is this subpart effective?
18.134 How can I obtain a Letter of Authorization?
18.135 What criteria does the Service use to evaluate Letter of Authorization requests?
18.136 What does a Letter of Authorization allow?
18.137 What activities are prohibited?
18.138 What monitoring and reporting requirements must I meet?

§ 18.131 What specified activities does this subpart cover?

This subpart applies to the incidental, but not intentional, take of small numbers of Florida manatees by Federal, State, and local government agencies engaged in activities related to the authorization, regulation, or operation of watercraft or watercraft access facilities.

§ 18.132 In what specified geographic region does this subpart apply?

(a) This subpart applies to the specified geographic area for three stocks of manatees within the state of Florida:

(1) The Northwest Stock, consisting of the counties along the Gulf of Mexico from Escambia County east and south to Hernando County; Lafayette and Gilchrist counties; and Marion County adjacent to the Withlacoochee River;

(2) The Upper St. Johns River Stock, consisting of Putnam County from Palatka south; Volusia, Flagler, and Marion counties adjacent to the St. Johns River or its tributaries; and Lake and Seminole counties; and

(3) The Atlantic Stock, consisting of counties along the Atlantic coast from Nassau County south to Miami-Dade County; the portion of Monroe County adjacent to the Florida Bay and the Florida Keys; Okeechobee County; and counties along the lower portion of the St. Johns River north of Palatka, which includes Putnam, St Johns, Clay, and Duval counties.

(b) A fourth region, the Southwest Stock, is excluded from this subpart. The Southwest Stock consists of the counties along the Gulf of Mexico from Pasco County south to Whitewater Bay in Monroe County; and DeSoto, Glades, and Hendry counties.

§ 18.133 When is this subpart effective?

This subpart is effective from [*insert date 120 days after date of publication of final rule in the* **Federal Register**] through [*insert date five years from the effective date*] for government agencies engaged in activities related to the authorization, regulation, or operation of watercraft or watercraft access facilities.

§ 18.134 Who can obtain a Letter of Authorization?

(a) Federal, State, or local agencies are eligible to apply for a Letter of Authorization.

(b) You should apply for a Letter of Authorization if you are conducting activities that:

(1) Are related to the authorization, regulation, or operation of watercraft or watercraft access facilities in the specified geographic area described in § 18.132; and

(2) May cause the taking of a Florida manatee.

(c) You must submit an application for a Letter of Authorization to our Jacksonville Field Office at least 90 days before the start of the proposed activity.

(d) Your application for a Letter of Authorization must include the following information:

(1) A description of the specific activity or class of activities;

(2) The dates and duration of the activity and the specific geographic region where it will occur;

(3) The anticipated impact of the activity on manatees;

(4) The anticipated impact of the activity on manatee habitat and the likelihood of restoration of the affected habitat;

(5) The anticipated impact to manatees from the loss or modification of habitat;

(6) The availability and feasibility (economic and technological) of using equipment, methods, and other manner of conducting the activity or other means of effecting the least practicable adverse impact on the manatee and its habitat;

(7) Suggested means of accomplishing the necessary monitoring and reporting; and

(8) Suggested means of encouraging and coordinating research opportunities, plans, and activities to reduce incidental take.

(e) We will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographic location. Each Letter of Authorization will identify allowable conditions or methods that are specific to the activity and location.

§ 18.135 What criteria does FWS use to evaluate Letter of Authorization requests?

We will evaluate your request for a Letter of Authorization using the standards in this section.

(a) We will determine whether the level of activity you are requesting exceeds the level that we consider to have a negligible impact on the stock. If the level you are requesting is greater, we will re-evaluate our findings to determine if those findings continue to be appropriate based on the greater level of activity. Depending on the results of the evaluation, we may grant the authorization as requested, add further conditions, or deny the authorization.

(b) In accordance with § 18.27(f)(5), we will make decisions concerning withdrawals or suspensions of Letters of Authorization, either on an individual or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in § 18.135(b) will not apply if we determine that an emergency exists that poses a significant risk to the well-being of the stock.

§ 18.136 What does a Letter of Authorization allow?

(a) Your Letter of Authorization will vary depending upon what you request

in your application. Your Letter will allow the incidental, but not intentional, take of Florida manatees when you are carrying out one or more of the following activities within one of the specified geographic regions defined in § 18.132:

(1) Regulating watercraft operation, including government programs responsible for regulating watercraft speed zones and restricted access areas for manatee protection, programs authorizing access or operation of watercraft, and programs authorizing marine events (*e.g.*, high-speed races, parades, etc.);

(2) Authorizing or regulating the location and construction of watercraft access facilities, including boat ramps, marinas, private and public boat docks, and other structures providing watercraft access to waters inhabited by manatees;

(3) Financing, in whole or in part, construction of watercraft access facilities;

(4) Operating government-owned or controlled facilities that provide watercraft access; and

(5) Operating government-owned or controlled watercraft for official government business other than that covered under § 18.22(a).

(b) You must conduct methods and activities identified in your Letter of Authorization in a manner that minimizes, to the greatest extent practicable, adverse impacts on Florida manatees and their habitat.

(c) Each Letter of Authorization will identify allowable conditions or methods that are specific to the activity and location.

§ 18.137 What activities are prohibited?

(a) You must not intentionally take Florida manatees under this subpart.

(b) Letters of Authorization do not authorize any take that does not comply with the terms and conditions of this subpart or the terms of the relevant Letter of Authorization.

(c) This subpart does not authorize the incidental take of Florida manatees during the illegal or reckless operation of watercraft or unauthorized construction of watercraft access facilities.

§ 18.138 What monitoring and reporting requirements must I meet?

(a) Holders of Letters of Authorization must cooperate with us and other designated agencies to monitor the impacts of activities related to watercraft operation and watercraft access facilities on Florida manatees.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe, record, and report the effects of their activities on Florida manatees.

Dated: November 5, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–28607 Filed 11–13–02; 8:45 am]

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Federal Register

Thursday,
November 14, 2002

Part III

Department of Transportation

Federal Aviation Adminstration

14 CFR Part 61

Robinson R–22/R–44 Special Training And Experience Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA–2002–13744; SFAR No. 73–1]

RIN 2120–AH94

Robinson R–22/R–44 Special Training And Experience Requirements

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to extend the expiration date of Special Federal Aviation Regulation (SFAR) 73. SFAR 73 establishes special training and experience requirements for pilots operating the Robinson model R–22 or R–44 helicopters in order to maintain the safe operation of Robinson helicopters. It also proposes special training and experience requirements for certified flight instructors conducting student instruction or flight reviews.

DATES: Comments must be received by December 16, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13744 at the beginning of your comments, and you should submit two copies 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 comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office 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: Robert J. O'Haver, Operations Branch, AFS–820, General Aviation and Commercial Division, 800 Independence Ave. SW., Washington, DC 20591; Telephone: (202) 267–7031.

SUPPLEMENTARY INFORMATION: 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, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, 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 this proposed 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 a.m. and 5 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.

Before acting on this proposal, 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 this proposal 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 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 (13744) of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of 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 Government Printing Office'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 docket number, notice number, or amendment number of this rulemaking.

Background

Part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) details the certification requirements for pilots and flight instructors. Particular requirements for pilots and flight instructors in rotorcraft are found in Subparts C through G, and Appendix B of part 61. These requirements do not address any specific type or model of rotorcraft. However, the FAA determined in 1995 that specific training and experience requirements are necessary for the safe operation of Robinson R–22 and R–44 model helicopters.

The R–22 is a 2-seat, reciprocating engine powered helicopter that is frequently used as a low-cost initial student training aircraft. The R–44 is a 4-seat helicopter with operating characteristics and design features that are similar to the R–22. The R–22 is the smallest helicopter in its class and incorporates a unique cyclic control and rotor system. Certain aerodynamic and design features of the aircraft cause specific flight characteristics that require particular pilot awareness and responsiveness.

The FAA found that the R–22 met 14 CFR part 27 certification requirements and issued a type certificate in 1979. The small size and relatively low operating costs of this helicopter made it popular as a training or small utility aircraft. Thus, a significant number of the pilots operating R–22 helicopters were relatively inexperienced. Prior to issuance of SFAR 73, the Robinson R–22 experienced a higher number of fatal accidents due to main rotor/airframe contact than other piston-powered helicopters. Many of these accidents were caused by low rotor revolutions per minute (RPM) or low ''G'' conditions that resulted in mast bumping or main rotor-airframe contact accidents. Aviation safety authorities attributed this to pilot error by inexperienced pilots.

In its analysis of accident data, the FAA found that apparently qualified pilots may not be properly prepared to safely operate the R–22 and R–44 helicopters in certain flight conditions. The FAA has determined that additional pilot training, originally established by SFAR 73, as modified in SFAR 73–1, continues to be needed for the safe operation of these helicopters.

Previous Regulatory Action

To address the safety issues, on March 1, 1995, the FAA published SFAR 73 (60 FR 11256). This SFAR required certain experience and training to perform pilot-in-command (PIC) and/or certified flight instructor (CFI) duties. SFAR 73 was issued on an emergency basis, with an expiration date of December 31, 1997. On November 21, 1997 (62 FR 62486), the FAA published an NPRM to extend SFAR 73 to December 31, 2002, with a minor amendment. The Final Rule extending SFAR 73 to December 31, 2002 was published on January 7, 1998 (63 FR 660).

Why the FAA Is Proposing To Extend SFAR 73

Since the issuance of SFAR 73, there has been a drop in the accident rate of Robinson helicopters associated with low ''G'' manuevers (low rotor RPM) resulting in main rotor/tailboom contact. Between the publication of SFAR 73 in 1995 and the first extension of the SFAR in 1997 no accidents occurred in the R–22 or R–44 that were related to low rotor RPM and tailboom/main rotor contact. There have been two accidents since the first extension in 1997. The FAA believes that SFAR 73 has been effective in improving the safe operation of these helicopters.

The FAA has taken several steps to permanently improve the safety of Robinson helicopters. The FAA has improved the airworthiness of the R–22 and R–44 through the issuance of a number of airworthiness directives. The FAA is also working on regulations and policies to govern pilot and certified flight instructor training and experience, based on the experience gained from SFAR 73. The FAA intends to fully implement these regulations and policies prior to 2007. In the meantime, the FAA believes that the additional training required by SFAR 73 is necessary for safety. The FAA therefore proposes to extend the expiration date of SFAR 73 for 5 years.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that a Federal agency may 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 for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) 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 annually (adjusted for inflation).

In conducting these analyses, FAA has determined this proposed rule: (1) Would generate benefits that exceed costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) would not have a significant economic impact on a substantial number of small entities; (3) would not constitute a barrier to international trade; and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

This proposed rule would extend the requirements of SFAR 73–1, which will expire on December 31, 2002, for an additional 5 years. It would impose costs on those receiving instruction in Robinson model R–22 and R–44 helicopters. Before they can be certificated, affected individuals would be required to receive additional model-specific training and experience for each model of Robinson helicopter. The individuals affected include flight instructors and students seeking to be certified to operate Robinson model helicopters. These individuals can avoid the costs of this proposed rule by receiving their instruction in a helicopter other than a Robinson model. However, they would not be certificated for Robinson model helicopters.

Regarding benefits, the adoption of this proposal would continue the observed reduction in the number of fatal accidents that occur in Robinson helicopters associated with low ''G'' maneuvers that can result in main rotor contact with the airframe. Prior to the issuance of SFAR 73 there were 15 accidents and 24 fatalities due to main rotor contact with the airframe. Since the SFAR was issued in 1995, however, there have been only two accidents and only one fatality involving R–22 or R–44 aircraft associated with low ''G'' operations and main rotor contact with the airframe.

Even though two accidents involving low ''G'' operations have occurred since SFAR 73 was extended in 1997, the FAA finds that the potential safety benefits still exceed costs and justify the adoption of this proposed rule. The FAA seeks public comments regarding these benefits and costs.

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 RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA 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 agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

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 proposed rule would require students and rated pilots seeking to conduct student instructions or flight reviews in a Robinson helicopter to incur added costs. Thus, the requirements of the SFAR impact individuals rather than entities. For these reasons, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small operators. The FAA seeks public comments regarding this finding.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as

safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The NPRM proposes to impose costs on those receiving instruction on Robinson helicopters. These costs have been in effect for almost seven years and apparently have not affected sales of the aircraft. The FAA has assessed the potential effect of this proposed rule and determined that it would have a neutral impact on foreign trade and, therefore, create no obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Federalism Implications

The SFAR proposed herein will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this proposed rule does not conflict with any international agreement of the United States.

Paperwork Reduction Act

The OMB control number assigned to the collection of information for this proposed rule is 2120–0021.

Conclusion

For the reasons previously discussed in the preamble, the FAA has determined that this SFAR is not significant under Executive Order 12866. Based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA certifies that this proposed rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This SFAR is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

The Proposal

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND 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. Revise section 3 of SFAR No. 73 to read as follows:

Special Federal Aviation Regulations

* * * * *

Special Federal Aviation Regulation No. 73—Robinson R–22/R–44 Special Training and Experience Requirements

* * * * *

3. *Expiration date.* This SFAR terminates on December 31, 2007, unless sooner superceded or rescinded.

Issued in Washington, DC, on November 7, 2002.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 02–28963 Filed 11–8–02; 4:17 pm]

BILLING CODE 4910–13–P

Federal Register

Thursday,
November 14, 2002

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Joint Program Announcement on Climate Variability and Human Health for FY 2003; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021108269]

RIN 0648–ZB33

Joint Program Announcement on Climate Variability and Human Health for FY 2003; National Oceanic and Atmospheric Administration (NOAA), in Collaboration With; National Science Foundation (NSF), Environmental Protection Agency (EPA) and EPRI (Formerly the Electric Power Research Institute)

AGENCY: Office of Global Programs, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: With the intent of stimulating integrated multidisciplinary studies and enhancing institutional collaboration, National Oceanic Atmospheric Administration (NOAA), Environmental Protection Agency (EPA), the National Science Foundation (NSF), and the Electric Power Research Institute (EPRI), announce our interest in receiving research proposals to improve our understanding of the human health consequences related to climate variability and enhance the integration of useful climate information into public health policy and decision-making. This joint announcement is intended to support the formation of multidisciplinary teams working in close collaboration on integrated projects to illuminate the human, biological, and physical pathways by which climate may affect human health, and which explore the potential for applying climate and environmental information toward the goal of improved public health. We are also interested in understanding how the human health impacts and responses related to climate variability affect our knowledge of potential consequences of, and adaptation and vulnerability to, longer term changes in the climate system.

Relevance of This Joint Announcement

Published in 2001, the U.S. National Research Council (NRC) report ''Under the Weather: Climate, Ecosystems and Infectious Disease'' highlights the need for strengthening research on the linkages between climate and infectious disease and recommends highly interdisciplinary collaboration involving modelers, meteorologists, climatologists, ecologists, social scientists, and a wide array of medical and public health professionals. The report recognizes that the effectiveness of disease early warning systems will depend upon the context in which they are used, and recommends that the development of such systems should involve the active participation of the system's end users. Also, the U.S. National Assessment of the Potential Consequences of Climate Variability and Change, Health Sector Report, published in 2000, calls for a greater scientific understanding of the causal relationships between climate and human health, and the need to take an interdisciplinary approach that actively involves decisionmakers and practitioners.

Several multi-agency sponsored workshops such as the American Academy of Microbiology Colloquium on Climate Variability and Human Health: An Interdisciplinary Perspective, and the workshop on Climate Change and Vector-borne and other Infectious Disease: A Research Agenda, called for cross-agency collaboration in supporting integrated research in this emerging discipline. The 1999 NRC report, Global Environmental Change: Research Pathways for the Next Decade, recognizes that climate may have important impacts on human health but that further study is necessary, and that such studies must also address issues of social vulnerability and adaptability.

It is well recognized that although early research has demonstrated a connection between climate and health in some cases, more rigorous and interdisciplinary research is required. This, coupled with an evolving capacity to understand and predict natural changes in the climate system, and a desire to develop and provide climate and environmental information for social benefit, particularly in the public health sector, has driven demand for improved understanding of the relationship between climate variability and human health.

Both the scientific research results and recommendations stemming from various reports and meetings highlight the complexity of the research questions and the need for a coordinated multi-agency and interdisciplinary approach. The very nature of the research required cuts across disciplinary boundaries, and spans a range of agency missions and mandates and private sector interests. The NOAA Office of Global Programs is interested in the effective use of climate information in climate-sensitive sectors. The NSF focuses on broadly based fundamental research to improve understanding of the Earth system. EPA is concerned with the impacts of climate change and variability on human health, and EPRI addresses key research gaps in climate change and human health. This announcement is offered as an experimental mechanism to fill critical gaps in climate variability and human health research and to coordinate funding of overlapping agency and institutional interests in such research. Other private sector organizations interested in jointly funding research through this announcement process should contact the NOAA Program Manager, Juli Trtanj (301) 427–2089, ext. 134, or Internet: *juli.trtanj@noaa.gov*. Research projects will be funded for a one, two or three year period.

Program Objectives

The overarching goal of this announcement is to develop and demonstrate the feasibility of new approaches or field studies that investigate or validate well-formed hypotheses or models of climate variability and health interactions.

This announcement is offered as part of an interagency effort to build an integrated climate and health community. Proposed research submitted under this announcement is encouraged to build on existing research activities, programs, research sites and facilities, or data sets.

Proposal Requirements and General Guidance

Research teams should include, at a minimum, one investigator each from the public health or medical response, ecology, and climate communities working in close collaboration on an integrated project. Research proposals submitted under this announcement are strongly encouraged to include components addressing either the adaptation or vulnerability of human and public health systems to climate variability, or an economic analysis of using climate information, or both. (See Criteria for Evaluation b). The funding partners will look favorably on research activities that involve end-users from the public health arena (*i.e.,* local public health officials, regional or international health organizations, other public health or disaster management agencies and institutions) and which address the means by which public health policy and decision-makers can use their research results. (See Criteria d). Investigators are encouraged to demonstrate that they will disseminate research results through formal presentation during at least one professional meeting and publication in a peer-reviewed journal. (See Criteria b).

Investigators should also plan to participate in an annual meeting of researchers funded under this announcement. This meeting will be organized by the funding partners and is intended to facilitate midpoint discussions of research and methodology as well as presentations of final research results. The participation of other team members, particularly new researchers at the graduate and postdoctoral level, is highly encouraged.

DATES: Unless otherwise noted, strict deadlines by which NOAA OGP must receive proposals for submission to the FY 2003 process are: Pre-proposals must be received by OGP no later than August 30, 2002, and full proposals must be received no later than November 29, 2002; Applications who have not received a response to their pre-proposal within four weeks should contact the program manager: Juli Trtanj (301) 427–2089, ext. 134 or internet: *juli.trtanj@noaa.gov.* The time from target date to grant award varies. We anticipate that review of full proposals will occur in February 2003, for most approved projects.

June 1, 2003, may be used as the earliest proposed start date on the proposal, unless otherwise directed by the Program Manager. Applicants should be notified of their status within six months of full proposal submission. All proposals must be submitted in accordance with the requirements listed below. Failure to heed the requirements may result in proposals being returned without review.

ADDRESSES: All submissions should be directed to: Office of Global Programs (OGP), National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910–5603.

FOR FURTHER INFORMATION CONTACT: Irma duPree at the above address or phone (301) 427–2089, exit. 107, fax: (301) 427–2222, Internet: *irma.duPree@noaa.gov.*

SUPPLEMENTARY INFORMATION:

1. Funding Availability

NOAA, NSF, EPA, and EPRI believed that research on the relationship between climate variability and human health will benefit significantly from a strong partnership with outside investigators. An estimated 1.5 million will be available for FY03. Current plans assume that over 50% of the total resources provided through this announcement will support extramural efforts, particularly those involving the broad academic community. Additional funding may be provided by NOAA, NSF, EPA, or EPRI.

This Program Announcement is for projects to be conducted by investigators both inside and outside of NOAA, NSF, EPA, and EPRI. The funding instrument for extramural awards will be a grant unless it is anticipated that any of the funding entities will be substantially involved in the implementation of the project, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include but are not limited to proposals for collaboration between a funding entity or funding entity scientist, and a recipient scientist or technician and/or contemplation by NOAA, NSF, or EPA of detailing Federal personnel to work on proposed projects. NOAA, NSF, and EPA will make decisions regarding the use of a cooperative agreement on a case-by-case basis. This program does not require matching share.

2. Eligibility

Participation in this competition is open to all institutions eligible to receive support for NOAA, NSF, EPA, and EPRI. For awards to be issued by NOAA, eligible applicants are institutions of higher education, hospitals, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments and Federal agencies. Applications from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA employees shall be effected by an interagency funds transfer. Proposals selected for funding from a non-NOAA Federal Agency will be funded through an interagency transfer. Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

3. Program Authority

NOAA Authority: U.S.C. 2931 *et seq.;* (CFDA No. 11.431)—Climate and Atmospheric Research.

NSF Authority: 42 U.S.C. 1861–75; (CFDA No. 47.050)—Geosciences.

EPA Authority: 42 U.S.C. 7403(a); 42 U.S.C. 7403(b); 42 U.S.C. 7403(g); 15 U.S.C. 2907(a); (CFDA No. 66.500)—Office of Research and Development.

Guidelines for Submission

1. Pre-Proposals

(a) Pre-proposals should be no longer than eight pages in length (no attachments will be accepted) and include the names and institutions of all investigators, a statement of the problem, description of data and methodology including names of data sets and types of models or analysis, a general budget for the project, a description of intended use of results for public health policy and decision making, and brief biographical sketches for each investigator. Pre-proposals can be submitted electronically to Irma duPree at *irma.dupree@noaa.gov,* unless other arrangements have been made with the Program Manager. Pre-proposals must be prepared using a 10 point font or larger, with one-inch margins. Pre-proposals longer than eight pages or with attachments will not be accepted.

(b) The Program Officers will evaluate the pre-proposals.

(c) Submission of pre-proposals is not a requirement, but it is in the best interest of the applicants and their institutions.

(d) Facsimile and e-mail submissions are acceptable for pre-proposals only.

(e) Projects deemed unsuitable during pre-proposal review will not be encouraged to submit full proposals.

(f) Investigators who are not encouraged to submit full proposals will not be precluded from submitting full proposals.

2. Criteria for Evaluation

Below are the criteria for evaluation that will be used for making award decisions. Pre-proposals will be evaluated on ability to meet these criteria.

(a) Scientific Merit—60% (to include: Methodology, proof of data quality and availability, experience of team and team members, and relevant peer-reviewed publications).

(b) Responsiveness to announcement—20%.

(c) Explicit multidisciplinary participation and collaboration—10%.

(d) Potential for use by climate, ecology and health community or public/environmental health community—10%.

3. Selection Procedures and Review Process

The Program Officers will not be voting members of an independent peer

panel. Each Program Officer will individually rank the proposals considering the recommendations and evaluations of the independent peer panel and the program policy factors listed below. The Federal Agency Program Officers will then make the funding selections taking into account these rankings, the panel review and evaluations, and program policy factors listed below. Proposals are usually awarded in the numerical order they are ranked based on the independent peer mail review or the independent peer panel review. However, the Program Officers may consider the following program policy factors:

(a) Whether proposals do not substantially duplicate other projects that are currently funded by NOAA, other Federal agencies or funding sources; (b) whether proposals do not substantially duplicate other proposals submitted in response to this announcement; (c) whether proposals funded maximize use of available funds; and (d) whether proposal cost falls within remaining funds available. As a result of this review, the Program Officers may decide to select an award out of order. The Program Officers will also determine the total duration and amount of funding for each selected proposal. Both agency and non-agency experts in the field may be used in this process.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding. Federal agency employees are subject to statutes pertaining to non-disclosure and confidentiality requirements protecting proprietary information that may be contained in applications submitted for potential funding. Non-Federal evaluators have agreed in writing to similar non-disclosure and confidentiality provisions. Please note, however, that should EPRI or another participating private organization which jointly funds research under this notice select an application for funding, none of the participating Federal agencies is responsible for any unauthorized disclosure of information that may occur on any dispute that may arise.

4. Proposal Submission

The following forms are required in each application, with original signatures on each federal form. Failure to comply with these provisions will result in proposals being returned without review.

(a) *Full Proposals:* (1) Proposals submitted to the NOAA Climate and Global Change Program must include the original and two unbound copies of the proposal. (2) Investigators are required to submit 3 copies of the proposal; however, the normal review process requires 20 copies. Investigators are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5 x 11″), or otherwise unusual materials submitted as part of the proposal. Only three copies of the federally required forms are needed. (3) Proposals must be limited to 40 pages (numbered), including abstract, results of prior research, statement of work, budget justification, budget, investigators' vitae, and all appendices. Append information may not be used to circumvent the page length limit. Federally mandated forms are not included within the page count. (4) Proposals should be sent to the NOAA Office of Global Programs at the above address. (5) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(b) *Required Elements:* All proposals must include the following elements:

(1) *Signed title page:* The title page must be signed by the Principal Investigator (PI) and the institutional representative. If more than one investigator is listed on the title page, please identify the lead investigator. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The amount of Federal funds being requested should be listed for each budget period and for the total project.

(2) *Abstract:* An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost and budget period.

(3) *Results from prior research:* The results of related research activities should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency or institution, award number, PIs, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) *Statement of work:* The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, and relevance to the announcement. Benefits of the proposed project to the general public and the scientific community should also be discussed. A summary of proposed work must be included clearly indicating that the proposed work is achievable. The statement of work, including references but excluding figures and other visual materials must not exceed 15 pages of text.

(5) *Budget Justification:* A brief description of the expenses listed on the budget and how they address the proposed work. Itemized justification must include salaries, equipment, publications, supplies, tuition, travel, etc.

(6) *Budget;* the proposal must include total and annual budget corresponding with the descriptions provided in the statement of work. A sample budget sheet can be found in the standard NOAA application kit-Federal Applicants must submit a Standard Form 424 94–92) ''Application for Federal Assistance'', including a detailed budget using the Standard Form 424a (4–92), ''Budget Information—Non-Construction Programs''. The form is included in the standard NOAA application kit. Additional text to justify expenses should be included as necessary. Federal researchers should contact Irma duPree at (301) 427–2089 ext. 107, for guidance regarding the types of forms required for submission. Additionally, Federal researchers should provide, with their application, the appropriate statutory authority that allows their agency to receive funds from another Federal agency to complete the work outlined in their proposal.

(7) *Vitae:* Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to 10–15 of the most recent and relevant publications with up to five other relevant papers.

(8) *Current and pending support:* For each investigator, submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending support.

(9) *List of suggested reviewers:* The cover letter may include a list of individuals qualified and suggested to review the proposal. It also may include a list of individuals that applicants would prefer to not review the proposals. Such lists may be considered at the discretion of the Program Offices.

(c) *Other requirements:* Applicants may obtain a Standard NOAA application kit from the Program homepage at *http://www.ogp.noaa.gov/,* or from Irma duPree at the Program Office (301) 427–2089 X107. Primary applicant certification—All primary applicants must submit a completed Form CD–511, ''Certification Regarding

Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying'' Applicants are also hereby notified of the following:

1. Nonprocurment Debarment and Suspension-Prospective participants (as defined at 26 CFR part 26, section 105) are subject to 15 CFR part 26, ''Nonprocurment Debarment and Suspension'' and the related section of the certification form prescribed above applies.

2. Drug Free workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions'', and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and (4) Anti-Lobbying disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL. ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

(d) *Lower Tier Certifications:*

(1) Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form SF–LLL, ''Disclosure of Lobbying Activities'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(2) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal Financial assistance awards.

(3) Pre-award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover pre-award costs.

(4) This program is subject to the requirements of OMB Circular No. A–110, ''Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations'', and 15 CFR part 24, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'', as applicable. Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

(5) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(6) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(7) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full, (ii) A negotiated repayment schedule is established and at least one payment is received, or (iii) Other arrangements satisfactory to the Department of Commerce are made.

(8) Buy American-Made Equipment or Products—Applicants are encouraged that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(9) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(e) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(f) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the NOAA Climate and Global Change program. The NOAA Climate and Global Change Program does not have direct TDD (Telephonic Device for the Deaf) capabilities, but can be reached through the State of Maryland supplied TDD contact number, 800–735–2258, between the hours of 8 a.m.–4:30 p.m.

Classification: This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paper Reduction Act, unless that collection displays a currently valid OMB control number. This notice has been determined to be not significant for purposes of Executive Order 12866.

Louisa Koch,

Acting Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 02–29087 Filed 11–13–02; 8:45 am]

BILLING CODE 3510–KA–M

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Part V

The President

Proclamation 7625—World Freedom Day, 2002

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Presidential Documents

Title 3—

The President

Proclamation 7625 of November 8, 2002

World Freedom Day, 2002

By the President of the United States of America

A Proclamation

On World Freedom Day, the United States joins with the nations of the world that are dedicated to liberty and democratic values in commemorating the fall of the Berlin Wall, which occurred on November 9, 1989. As we remember this historic event, we renew our commitment to advancing democracy, peace, and freedom for all throughout the world.

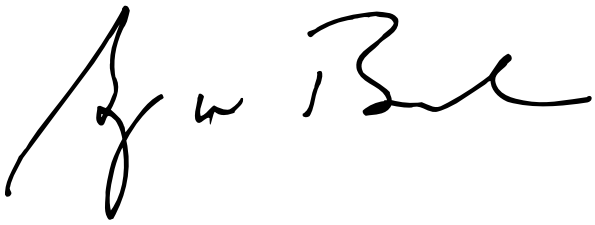
The fall of the Berlin Wall ushered in a new era of liberty and self-determination in Central and Eastern Europe. In the years that followed this remarkable event, the citizens of formerly Communist states participated in open elections, secured their common rights to free speech, and claimed other fundamental freedoms. This triumph for democracy demonstrated that tyranny is temporary, and that liberty is the universal and guiding goal for all mankind.

Since the fall of the Berlin Wall, we have made great progress in encouraging free and open societies on every continent. But challenges remain. Today, too many people still suffer at the hands of dictators who deny liberty and support activities and organizations that aim to disrupt the freedom of other countries.

On World Freedom Day, we celebrate freedom and its capacity to improve lives around the world. We also honor the people of the former Soviet bloc countries who fought against tyranny, and we recognize those who continue the struggle for freedom worldwide. As we face new challenges and welcome new opportunities, we remain committed to protecting our freedom and helping others realize their dreams of liberty.

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 November 9, 2002, as World Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities and to reaffirm their dedication to freedom and democracy for all.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of November, 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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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 14, 2002

ENVIRONMENTAL PROTECTION AGENCY

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- State operating permits programs—
  - California; published 10-15-02

INTERIOR DEPARTMENT

Land Management Bureau

Minerals management:
- Coal management—
  - Coal lease modifications, etc.; published 10-15-02

POSTAL SERVICE

Domestic Mail Manual:
- Five percent error limit for sequenced mailings; revision; published 10-15-02

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Boeing; published 10-30-02

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:
- Discretionary bridge program; revisions to rating factor; published 10-15-02

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Agricultural Marketing Service

Onions (sweet) grown in—
- Washington and Oregon; comments due by 11-22-02; published 11-1-02 [FR 02-27765]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Bees, beekeeping byproducts, and beekeeping equipment; hearings; comments due by 11-18-02; published 8-19-02 [FR 02-20941]

Exportation and importation of animals and animal products:
- Exotic Newcastle disease; disease status change—
  - Denmark; comments due by 11-19-02; published 9-20-02 [FR 02-23940]

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Review inspection requirements; comments due by 11-21-02; published 10-23-02 [FR 02-26922]

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National Oceanic and Atmospheric Administration

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- Magnuson-Stevens Act provisions—
  - Domestic fisheries; exempted fishing permit applications; comments due by 11-19-02; published 11-4-02 [FR 02-28008]

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- Antarctic Marine Living Resources Conservation Commission; monitoring permits and system, fishing season, registered agent, and disposition of seizures; comments due by 11-18-02; published 10-22-02 [FR 02-26872]
- Pacific tuna—
  - Management measures; comments due by 11-18-02; published 11-4-02 [FR 02-28007]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Dishwashers; test procedures; comments due by 11-18-02; published 9-3-02 [FR 02-22315]

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Air pollutants, hazardous; national emission standards, etc.:
- Gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations); comments due by 11-19-02; published 9-20-02 [FR 02-23740]

Air quality implementation plans; approval and promulgation; various States:
- Colorado; comments due by 11-22-02; published 10-23-02 [FR 02-26990]
- Massachusetts and New Hampshire; comments due by 11-20-02; published 10-21-02 [FR 02-26709]
- North Carolina; comments due by 11-21-02; published 10-22-02 [FR 02-23582]
- Washington; comments due by 11-22-02; published 10-23-02 [FR 02-26992]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Halosulfuron-methyl; comments due by 11-19-02; published 9-20-02 [FR 02-23995]
- Methoxyfenozide; comments due by 11-19-02; published 9-20-02 [FR 02-23996]

Superfund program:
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  - National priorities list update; comments due by 11-22-02; published 10-23-02 [FR 02-27130]

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- Loan policies and operations—
  - Capital adequacy and related regulations; miscellaneous amendments; comments due by 11-21-02; published 10-22-02 [FR 02-26697]

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- Telephone Consumer Protection Act; implementation—
  - Unsolicited advertising; comments due by 11-22-02; published 10-8-02 [FR 02-25569]

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- Oklahoma; comments due by 11-18-02; published 10-16-02 [FR 02-26228]
- Various States; comments due by 11-18-02; published 10-21-02 [FR 02-26226]

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- Internal analgesic, antipyretic, and antirheumatic products (OTC); tentative final monograph and related labeling; comments due by 11-19-02; published 8-21-02 [FR 02-21122]

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- Minimum standards of character and employment suitability of individuals in positions involving contact with Indian children; comments due by 11-22-02; published 9-23-02 [FR 02-23943]

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- Subpoenas and production in response to subpoenas or demands of courts or other authorities; comments due by 11-19-02; published 9-20-02 [FR 02-23931]

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- Findings on petitions, etc.—
  - California golden trout; comments due by 11-19-02; published 9-20-02 [FR 02-23941]

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- Excavation standard; regulatory review; comments due by 11-19-02; published 8-21-02 [FR 02-21221]

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- Hexavalent chromium; occupational exposure; comments due by 11-20-02; published 8-22-02 [FR 02-21449]

LABOR DEPARTMENT

Pension and Welfare Benefits Administration

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- Blackout period notification; civil penalties for failure to provide notice and conforming technical changes; comments due by 11-20-02; published 10-21-02 [FR 02-26523]
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Visas; nonimmigrant documentation:

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Ports and waterways safety:

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Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 11-22-02; published 10-8-02 [FR 02-25604]

Hartzell Propeller, Inc.; comments due by 11-22-02; published 9-23-02 [FR 02-24018]

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TRANSPORTATION DEPARTMENT

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TRANSPORTATION DEPARTMENT

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Hazardous liquid pipeline operator annual report form; comments due by 11-22-02; published 9-19-02 [FR 02-23837]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 4013/P.L. 107–280

Rare Diseases Act of 2002 (Nov. 6, 2002; 116 Stat. 1988)

H.R. 4014/P.L. 107–281

Rare Diseases Orphan Product Development Act of 2002 (Nov. 6, 2002; 116 Stat. 1992)

H.R. 5200/P.L. 107–282

Clark County Conservation of Public Land and Natural Resources Act of 2002 (Nov. 6, 2002; 116 Stat. 1994)

H.R. 5308/P.L. 107–283

To designate the facility of the United States Postal Service located at 301 South Howes Street in Fort Collins, Colorado, as the ''Barney Apodaca Post Office''. (Nov. 6, 2002; 116 Stat. 2020)

H.R. 5333/P.L. 107–284

To designate the facility of the United States Postal Service located at 4 East Central Street in Worcester, Massachusetts, as the ''Joseph D. Early Post Office Building''. (Nov. 6, 2002; 116 Stat. 2021)

H.R. 5336/P.L. 107–285

To designate the facility of the United States Postal Service located at 380 Main Street in Farmingdale, New York, as the ''Peter J. Ganci, Jr. Post Office Building''. (Nov. 6, 2002; 116 Stat. 2022)

H.R. 5340/P.L. 107–286

To designate the facility of the United States Postal Service located at 5805 White Oak Avenue in Encino, California, as the ''Francis Dayle 'Chick' Hearn Post Office''. (Nov. 6, 2002; 116 Stat. 2023)

H.R. 3253/P.L. 107–287

Department of Veterans Affairs Emergency Preparedness Act of 2002 (Nov. 7, 2002; 116 Stat. 2024)

H.R. 4015/P.L. 107–288

Jobs for Veterans Act (Nov. 7, 2002; 116 Stat. 2033)

H.R. 4685/P.L. 107–289

Accountability of Tax Dollars Act of 2002 (Nov. 7, 2002; 116 Stat. 2049)

H.R. 5205/P.L. 107–290

To amend the District of Columbia Retirement Protection Act of 1997 to permit the Secretary of the Treasury to use estimated amounts in determining the service longevity component of the Federal benefit payment required to be paid under such Act to certain retirees of the Metropolitan Police Department of the District of Columbia. (Nov. 7, 2002; 116 Stat. 2051)

H.R. 5574/P.L. 107–291

To designate the facility of the United States Postal Service located at 206 South Main Street in Glennville, Georgia, as the ''Michael Lee Woodcock Post Office''. (Nov. 7, 2002; 116 Stat. 2052)

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