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Presidential Documents

Title 3—

The President

Proclamation 7627 of November 14, 2002

America Recycles Day, 2002

By the President of the United States of America

A Proclamation

Americans are dedicated to protecting our land, ensuring that our air is clean, and preserving the purity of our water. To help fulfill these responsibilities, government, businesses, community organizations, and every citizen must work together to serve as good stewards of all of our natural resources. On America Recycles Day, we renew our commitment to preserving our resources by recycling and using products made with recycled materials.

Recycling has become one of the most successful environmental initiatives in our Nation's history. In 1990, Americans recycled or composted 34 million tons of material. In the following decade, this number more than doubled to nearly 70 million tons. These efforts are helping to safeguard our environme by reducing the need for landfills and incinerators. Last year, the Federal Government contributed to these important goals by purchasing paper, retread tires, re-refined oil, concrete, insulation, and other products containing recycled materials.

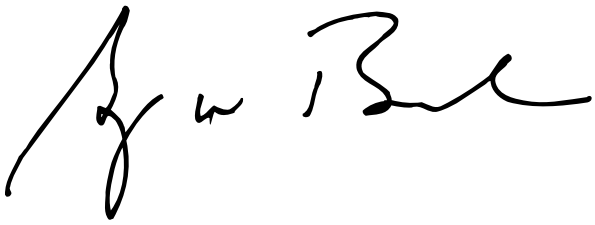
Our Nation also continues to develop innovative ways to reduce, reuse, and recycle our waste. Although we have made significant progress, much work still remains. Americans generate more than 230 million tons of solid waste each year. Simple measures can help communities, businesses, and individuals decrease waste and extend the use of our natural resources. Individuals and families can participate in the recycling programs offered in their neighborhoods.

At home and in school, parents and teachers can educate children about the benefits of recycling and the importance of caring for our environment. By purchasing products made from recycled materials, American consumers provide economic incentives for businesses to collect, produce, and market more products that are recycled and recyclable. Our recycling and reuse industry provides approximately 1.4 million jobs, producing billions of dollars in annual revenues that contribute to the prosperity of our country. By recycling, we conserve our valuable resources, protect our air and water from harmful pollutants, and strengthen our economy.

On America Recycles Day, I encourage all Americans to rededicate themselves to using our resources more wisely by reusing and recycling the materials they purchase. Through these efforts, we help make our communities more livable, our businesses more competitive, and our Nation a healthier place for future generations to enjoy.

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 15, 2002, as America Recycles Day. I call upon the people of the United States to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth 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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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–02–11]

RIN 0581–AC20

Tobacco Inspection; Mandatory Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that amended the regulations to provide mandatory grading for kinds of tobacco approved by a majority of producers voting in the mandatory grading referenda and to reduce the fee for mandatory grading from $.01 per pound to $.009 per pound.

EFFECTIVE DATE: November 20, 2002.

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

SUPPLEMENTARY INFORMATION: In accordance with section 759 of the Appropriations Act (Pub. L. 107–76; 7 U.S.C. 511s), USDA conducted referenda among producers of each kind of tobacco that is eligible for price support under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) to determine whether a majority of producers of a kind of tobacco voting in the referendum favored the mandatory grading of that kind of tobacco.

A notice of referenda was published in the **Federal Register** on March 5, 2002 (67 FR 9895) together with a final rule establishing procedures for the referenda. The USDA's Farm Service Agency (FSA) certified the results of the referenda on March 27, 2002, and April 3, 2002.

A majority of producers voting in the referenda favored the mandatory grading of flue-cured tobacco, types 11, 12, 13, and 14; burley tobacco, type 31; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; and dark air-cured tobacco, types 35 and 36.

Producers of cigar filler and binder tobacco, types 42, 43, 44, 53, 54, and 55 did not approve mandatory grading.

The Appropriations Act provided that, if a majority of the producers voting in the referenda favored the mandatory grading of that kind, USDA was directed to ensure that the kind of tobacco is graded at the time of sale for the 2002 and subsequent marketing years. The USDA was also directed to establish user fees for any such inspections. To the maximum extent practicable, these fees must be established, collected, and used in the same manner as user fees for the grading of tobacco sold at auction authorized under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*).

The USDA published in the **Federal Register** on May 23, 2002 (67 FR 36079) an interim final rule and notice of referenda results to amend the regulations to provide mandatory grading for flue-cured tobacco, types 11, 12, 13, 14; burley tobacco, type 31; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37, and dark air-cured tobacco, types 35 and 36. The interim final rule also reduced the fee for mandatory inspection from $0.01 per pound to $0.009 per pound. The USDA requested comments on the interim final rule and the comment period expired on July 22, 2002. One comment was received from a tobacco purchasing company. The respondent stated that the purchasing companies should be allowed to establish their own operating hours to properly serve the growers, requested that all USDA employees be required to sign in at the receiving station's main office prior to beginning work, and all USDA employees be required to wear identification at all times. The USDA has flexible work schedules that can ordinarily accommodate purchasing companies establishing their own operating hours. Any grading services required to be performed outside of a regular work schedule, such as overtime and holidays, would be assessed to the purchasing company. The USDA implemented a program for the 2002 marketing season that requires grading personnel to wear picture identification cards and safety vests while performing grading services at receiving stations, and USDA personnel will notify any receiving station's main office of their arrival whenever this is requested.

This rule amended 7 CFR part 29, subpart B, regulations, to provide for mandatory grading at places other than designated tobacco auction markets. The regulations prior to the effective date of the interim rule only required grading of tobacco that was sold at auction on designated markets as set forth in § 29.8001. The regulations were amended in this rule to include producer tobacco sold at locations (receiving stations) where tobacco is offered for marketing or shipment into commerce, other than at designated auction markets. Additionally, the regulations were amended, at subpart B, to reference the implementing authority contained in the Appropriations Act. The Tobacco Inspection Act will continue to be referenced for kinds of tobacco sold at auction on designated markets not required under the Appropriations Act.

In the past, producers sold almost all of their tobacco at auction on designated markets. Last year, most producer tobacco was sold under contract and was delivered to receiving stations operated by buying concerns. Some of this tobacco was graded under the permissive grading program.

This rule added a definition of ''receiving station'' as meaning ''Points at which producer tobacco is offered for marketing (other than sale at auction on a designated market), including tobacco auction warehouses, packing houses, prizeries, or places where tobacco is handled or stored.'' This definition is intended to be flexible enough to cover the circumstances in which producer tobacco may be marketed.

Also, the regulations were amended to provide for proper display of tobacco, adequate space to perform inspections at receiving stations and the issuance of

an inspection certificate. The requirements are similar to those at auction markets but are flexible because conditions will differ at the receiving stations. When the tobacco is inspected or graded by the receiver, the tobacco must be made available for mandatory inspection at the same time and at the same location within the receiving station. In order to provide a meaningful service to growers, who are paying for the inspection service, it is necessary to require the proper display of the tobacco and to require that the mandatory inspection be conducted at the same time and under the same conditions as any other inspections, and that the results be readily available to the producer. It is also necessary to provide that, as at auction markets, no one may interfere with the inspector in the process of grading tobacco.

The user fee for mandatory inspection of tobacco was increased from $.0083 to $.0100 per pound in 2001 to cover the costs of performing grading services and to maintain an adequate reserve to cover program financial responsibilities. During the 2001 crop-year, the Department only graded 31 percent of the total amount of tobacco marketed. However, with the adoption of mandatory grading of all tobacco, except cigar types, approximately 98 percent of tobacco marketed will require federal grading for the 2002 and subsequent crop years.

As a result of resources being more efficiently utilized over a larger geographical area and the additional revenue generated, the fee is reduced from $.010 to $.009 per pound. The reduced fee was recommended by the National Advisory Committee for Tobacco Inspection Services at its meeting on April 16, 2002.

The AMS reviews its user fee programs annually to determine if fees are adequate. The most recent review determined that the previous fee schedule was more than adequate for the 2002 crop-year and would exceed the target level for the operating reserve balances.

Due to an estimated 69 percent increase in tobacco to be inspected for the 2002 crop-year, obligations are estimated at $10,152,000 and revenues are expected to be $8,503,000 for a loss of $1,649,000. An analysis of available data indicates that a fee of $.009 per pound would result in maintaining the operating reserve balance at $6,279,000 for the 2002 crop-year and $4,357,000 for the 2003 crop-year which is adequate to meet financial obligations.

Executive Order 12866 and 12988

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The rule will not exempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

In conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of ''small business'' which are defined by the Small Business Administration (13 CFR 12.201) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. There are about 190 tobacco warehouses and about 450,000 tobacco producers. There will also be about 35 receiving stations, most of which will be operated under contract at former tobacco auction warehouses and a few of which will be operated at tobacco auction warehouses. These would also be small businesses. It has been determined that this rule will not have a significant economic impact on a substantial number of small entities. The requirements of this rule are the minimum necessary for the implementation of the requirements of the Appropriations Act for the mandatory inspection of tobacco. The provisions are similar, but somewhat more flexible, that the requirements for the inspection and certification of tobacco sold at auction on designated markets, which have previously been determined not to have a significant economic impact on a substantial number of small entities.

The information collection requirements that appear in part 29 have been previously approved by the Office of Management and Budget under OMB Control No. 0581–0056.

List of Subjects in 7 CFR Part 29

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

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

PART 29—TOBACCO INSPECTION

Accordingly, the interim final rule amending 7 CFR part 29 which was published at 67 FR 36079 on May 23, 2002, is adopted as a final rule without change.

Dated: November 8, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29031 Filed 11–18–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV–98–303]

Apples; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the United States Standards for Grades of Apples. These standards are issued under the Agricultural Marketing Act of 1946. The rule will provide for the mixed varieties and change the color requirements for apples by reducing the number of apple varieties required to meet specific minimum color requirements. It also deletes the provision that apples be ''carefully hand-picked.'' The ''U.S. No. 1 Early grade'' and the ''Unclassified'' section will be deleted. Size specifications will be changed to allow Red Delicious and Golden Delicious varieties to meet either a minimum diameter or a minimum weight (currently these varieties must meet a minimum diameter designation). Changes will also be made to the application of tolerances for the purpose of allowing greater tolerances for defects in individual packages which contain 10 pounds or less, provided that the averages for the lot as a whole are met. The marking requirements will be changed by adding variety and grade to required markings on containers. The term ''brown surface discoloration'' will be added to the provisions which contain the requirements for the various grades of apples. The classification of ''Bitter pit'' and ''Jonathan spot'' will be clarified. The definition of ''fairly tight'' will be revised. Also, the U.S. Condition Standards for Export will be revised by removing the tolerance for slight scald

and by changing the individual container tolerances in these requirements from one defective apple to three defective apples, provided the averages for the lot as a whole are met. In addition, the rule will provide metric equivalents for dimensions given in terms of U.S. customary units and contains conforming and editorial changes. The purpose for this revision is to update and revise the standards to more accurately represent today's marketing practices.

EFFECTIVE DATES: December 19, 2002.

FOR FURTHER INFORMATION CONTACT: David Priester, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2065 South Building, STOP 0240, Washington, DC 20250; Fax (202) 720–8871.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and 12988

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Regulatory Flexibility Act

The Agricultural Marketing Service (AMS) received a request to update and revise the United States Standards for Grades of Apples from the U.S. Apple Association (USAA). The USAA is a trade association representing over 500 individual apple business-related firms including growers, packers, shippers, processors, and industry suppliers. In addition, the USAA also represents approximately 9,000 apple growers throughout the U.S. through affiliation with state or regional apple associations. The Department and the USAA have been working closely together over the past eleven years to identify issues, defects, tolerances, and marketing practices related to apples for fresh market sale for the purpose of updating the United States Standards for Grades of Apples. This rule revising the United States Standards for Grades of Apples will benefit all aspects of the apple industry with regard to these areas and make the standards current with today's marketing trends and practices.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this final regulatory flexibility analysis.

This rule will revise the U.S. Standards for Grades of Apples that were issued under the Agricultural Marketing Act of 1946. This amendment of the standards will: Revise the basic requirement sections of each grade by providing for mixed varieties; delete the reference to ''carefully hand-picked'' revise the reference to ''scald'' by using the term ''brown surface discoloration''; clarify the classification of ''Bitter pit'' and ''Jonathan spot''; place the definitions for bruising in their appropriate places; delete the ''U.S. No. 1 Early grade''; revise the color requirements section by redefining the requirements and requiring less varieties to meet these requirements; delete the ''Unclassified'' section; designate weight equivalents (in grams) for certain diameter sizes of Red Delicious and Golden Delicious varieties; revise the ''application of tolerances'' section in regard to consumer packages; and add variety and grade to the marking requirements section. Based on comments received, the definition of ''fairly tight'' will be revised.

The U.S. Standards for Grades of Apples and the U.S. Condition Standards for Export are both voluntary standards. There are no regulatory provisions that require the use of these standards with the exception of the Export Apple Act (7 U.S.C. 581 *et seq.*) and its regulations (7 CFR part 33) in regard to the U.S. Standards for Grades of Apples. Under the Export Apple Act, shipments of apples to foreign countries must meet a minimum requirement of the U.S. No. 1 grade (there are exemptions based on lot size, destination, etc.)

According to USDA's National Agricultural Statistics Service (NASS) report of the 1997 Census of Agriculture, there are approximately 18,500 apple farms in the United States. Further, NASS information indicates that, in 1998, these 18,500 farms produced over 11 billion pounds of apples. Approximately 55 percent of the 1998 crop was eaten as fresh fruit. In 1999, apple production was down to 10 billion pounds. The top five producing states were Washington, New York, Michigan, California, and Pennsylvania, respectively. These five states collectively produced over 83 percent of the total 1998 U.S. apple crop.

Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000. The apple industry is characterized by growers and handlers whose farming operations generally involve more than one type (such as fresh market utilization versus processed market utilization) and variety of apple, and whose income from farming operations is not exclusively dependent on one apple variety or even one commodity. Typical apple growers and shippers produce multiple varieties of fresh market apples within a single year. It is estimated that the majority of the producers do have overall gross annual receipts greater than $750,000. Additionally, there are approximately 5,100 apple handlers (*i.e.*, packers, brokers, distributors, importers, *etc.*). It is estimated that the majority of apple handlers do not fit SBA's definition of a small entity. Further, there are 48 state inspection agencies in addition to Fruit and Vegetable Programs (FVP) that perform inspections using these standards.

This rule will revise the U.S. Standards for Grades of Apples. These changes are intended to update the standards to maintain their usefulness in today's markets. For example, the color requirements that appear in the current standards are much the same as those that were published in 1923, even though many of the varieties marketed then are no longer marketed, or marketed in a significant volume. This action will make the standards more consistent and uniform with current marketing trends and commodity characteristics. Therefore, it should benefit handlers and growers regardless of their size. Further, the benefits of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for larger entities. Alternatives were considered for this action. One alternative would be to not issue the rule. However, the need for revision increases due to ever changing market characteristics, and the revisions represents approximately 10 years of research, surveys, and other input from all sectors of the apple industry and government. Further, since the purpose of these standards is to facilitate the marketing of agricultural commodities, not revising them by upgrading the

standard could result in confusion in terms of the proper application of the U.S. grade standards.

This action will not impose any additional reporting or recordkeeping requirements on either small or large apple producers, handlers, or importers. In addition, other than discussed above, the Department has not identified any Federal rules that duplicate, overlap, or conflict with this rule.

The proposed rule, United States Standards for Grades of Apples, was published in the **Federal Register** on March 26, 2002 (Docket Number FV–98–303). A comment period of 60 days was issued which closed on May 28, 2002.

Comments

A total of six comments were received during the comment period. These included comments from industry associations representing growers, packers, shippers, processors, and State Departments of Agriculture.

One comment, received from an industry association, was in favor of the proposal in its entirety. This comment stated that it is expected that these changes will more accurately represent typical commercial practices and standards within the apple industry.

Two comments were received in favor of the proposal with the exception of the allowing for weight equivalents for diameter sizes of the Red Delicious and Golden Delicious varieties. One comment received from a State Department of Agriculture opposed this change. The reason given was that this change would burden inspection services in all states by requiring the purchase of multiple gram scales. State inspection services generally inspect other products which require the use of scales. AMS believes that although there may be a need to purchase additional scales, the cost of these scales would not be substantial enough to override the industry's request to allow for these equivalents. In another comment, an FVP staff member expressed the opinion that weight equivalents for diameter sizes would make it difficult to perform inspections. Additionally, the commenter expressed concern that by only allowing two varieties to use the weight equivalent for diameter sizes would be inequitable. AMS experience with performing inspection for products having weight equivalents for diameter sizes has not proven to increase the level of difficulty. In regard to the commentors concern of only allowing two varieties to use weight equivalents, these two varieties were specified due to their characteristic shape. Their shape can often be elongated rather than wide. The result is a product that actually has more edible flesh but is still unable to meet minimum diameter size requirements. AMS believes that the use of weight equivalents for diameter sizes should remain as stated in the proposal.

One comment was received from a company which stores, packs, and markets apples both domestically and for export; this company also represents growers. The comment was generally in agreement of the proposal. However, the comment addressed two issues. The first being the removal of the phrase ''carefully handpicked.'' The commenter felt that this phrase is useful in encouraging growers to be careful in the handling of apples. AMS proposed this deletion and its corresponding definition because it is difficult to determine if an apple has been ''carefully handpicked.'' Further, this requirement was not intended to prevent machine picked apples from making a U.S. grade. Therefore, AMS believes ''carefully handpicked'' and its corresponding definition should be deleted as proposed. The commenter also stated, in its opinion the term ''surface scald'' would be a better term than ''brown surface discoloration.'' As stated in the proposed rule, there are several defects that occur simply as brown surface discoloration. Surface scald cannot be differentiated from these defects by the naked eye. AMS believes it is more accurate to group these defects together as ''brown surface discoloration'' rather than ''scald.''

One comment by a State Department of Agriculture recommended removing the word ''surface'' in the definition of damage by bitter pit. This commenter stated, ''Often bitter pit cannot be detected unless the fruit is cut and examined internally.'' The Department's Agricultural Handbook 376 states (with regard to bitter pit), ''If observed at the earliest visible stage, the skin over the affected area appears as water-soaked.'' Although bitter pit does affect the flesh of the apple it is not discernable until the skin is affected. Therefore, AMS believes the definition damage by bitter pit should remain as in the proposal. This commenter also noted an error in the proposed rule. The ''Discussion of the Proposed Rule'' section stated ''section 51.300, U.S. Extra Fancy, section 51.301, U.S. Fancy, and section 51.303, U.S. Utility currently states that apples must be 'of one variety.' This would be changed to '* * * consists of apples of one variety (except when more than one variety is printed on the container)' to allow for mixed variety lots.'' However, in the actual wording of the standards section of the proposed rule, these sections state, ''* * * consists of apples of similar varietal characteristics (except when the name of more than one variety is printed on the container).'' These sections should be as stated in the ''Discussion of the Proposed Rule'' section and are corrected in this final rule.

A comment from a State Department of Agriculture stated, ''I would urge USDA to consider exempting the ''Euro'' carton from the requirements of fairly well filled and fairly tight which will allow for new marketing trends to enhance marketing rather than impede progress.'' Apples packed in tray or cell packed cartons are required to be at least fairly tight or fairly well filled in order to meet packing requirements in section 51.310. Fairly tight and fairly well filled are defined within these requirements as follows: ''Fairly tight'' means that apples are of the proper size for molds or cell compartments in which they are packed, and that molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible. The top layer of apples, or any pad or space filler over the top layer of apples, shall be not more than ¾ inch below the top edge of the carton; ''Fairly well filled'' means that the net weight of apples in containers ranging from 2,100 to 2,900 cubic inch capacity is not less than 37 pounds for Cortland, Gravenstein, Jonathan, McIntosh and Golden Delicious varieties and not less than 40 pounds for all other varieties. The commenter notes, ''In recent years the apple industry has been going through significant changes in the way apples are being packed and marketed. Tray pack cartons are being modified in many ways and these types of cartons may not meet the definitions of fairly well filled or fairly tight.'' AMS agrees with the commenter's observation in that the current definition of fairly tight and fairly well filled would restrict the use of the ''Euro'' carton. However, rather than exempting a particular container, it would be more appropriate and beneficial to the apple industry to update the definition of fairly tight to reflect current marketing practices. Therefore, based on this comment the definition of fairly tight will be revised to read as follows: ''Fairly tight'' means that apples are of the proper size for molds or cell compartments in which they are packed, and that molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts,

Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

PART 51—[Amended]

1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621—1627.

2. Subpart—United States Standards for Grades of Apples is revised to read as follows:

Subpart—United States Standards for Grades of Apples

Grades

51.300 U.S. Extra Fancy.
51.301 U.S. Fancy.
51.302 U.S. No. 1.
51.303 U.S. Utility.
51.304 Combination grades.

Color Requirements

51.305 Color requirements.

Tolerances

51.306 Tolerances.

Application of Tolerances

51.307 Application of tolerances.

Methods of Sampling and Calculation of Percentages

51.308 Methods of sampling and calculation of percentages.

Condition after Storage or Transit

51.309 Condition after storage or transit.

Packing Requirements

51.310 Packing requirements.

Marking Requirements

51.311 Marking requirements.

Definitions

51.312 Mature.
51.313 Overripe.
51.314 Clean.
51.315 Fairly well formed.
51.316 Injury.
51.317 Damage.
51.318 Serious damage.
51.319 Seriously deformed.
51.320 Diameter.

U.S. Condition Standards for Export

51.321 U.S. Condition Standards for Export.

Metric Conversion Table

51.322 Metric conversion table.

Grades

§ 51.300 U.S. Extra Fancy.

''U.S. Extra Fancy'' consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, clean, fairly well formed, free from decay, internal browning, internal breakdown, soft scald, scab, freezing injury, visible water core, and broken skins. The apples are also free from injury caused by bruises, brown surface discoloration, smooth net-like russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, disease, insects, or other means. The apples are free from damage caused by bitter pit or Jonathan spot and by smooth solid, slightly rough or rough russeting, or stem or calyx cracks, as well as damage by invisible water core after January 31st of the year following the year of production except for the Fuji variety of apples. Invisible water core shall not be scored against the Fuji variety of apples under any circumstances. For the apple varieties listed in table I of § 51.305, each apple of this grade has the amount of color specified for the variety. (*See* §§ 51.305 and 51.306.)

§ 51.301 U.S. Fancy.

''U.S. Fancy'' consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, clean, fairly well formed, and free from decay, internal browning, internal breakdown, soft scald, freezing injury, visible water core, and broken skins. The apples are also free from damage caused by bruises, brown surface discoloration, russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, disease, insects, bitter pit, Jonathan spot, or damage by other means, or invisible water core after January 31st of the year following the year of production, except for the Fuji variety of apples. Invisible water core shall not be scored against the Fuji variety of apples under any circumstances. For the apple varieties listed in table I of § 51.305, each apple of this grade has the amount of color specified for the variety. (*See* §§ 51.305 and 51.306.)

§ 51.302 U.S. No. 1.

''U.S. No. 1'' consists of apples which meet the requirements of U.S. Fancy grade except for color, russeting, and invisible water core. In this grade, less color is required for all varieties listed in table I of § 51.305. Apples of this grade are free from excessive damage caused by russeting which means that apples meet the russeting requirements for U.S. Fancy as defined under the definitions of ''damage by russeting,'' except the aggregate area of an apple which may be covered by smooth net-like russeting shall not exceed 25 percent; and the aggregate area of an apple which may be covered by smooth solid russeting shall not exceed 10 percent: *Provided,* That, in the case of the Yellow Newtown or similar varieties, the aggregate area of an apple which may be covered with smooth solid russeting shall not exceed 20 percent. Each apple of this grade has the amount of color specified in § 51.305 for the variety. Invisible water core shall not be scored in this grade. (*See* §§ 51.305 and 51.306.)

(a) *U.S. No. 1 Hail:* ''U.S. No. 1 Hail'' consists of apples which meet the requirements of U.S. No. 1 grade except that hail marks where the skin has not been broken and well healed hail marks where the skin has been broken, are permitted, provided the apples are fairly well formed. (*See* §§ 51.305 and 51.306.)

(b) [Reserved]

§ 51.303 U.S. Utility.

''U.S. Utility'' consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, not seriously deformed and free from decay, internal browning, internal breakdown, soft scald, and freezing injury. The apples are also free from serious damage caused by dirt or other foreign matter, broken skins, bruises, brown surface discoloration, russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, visible water core, bitter pit or Jonathan spot, disease, insects, or other means. (*See* § 51.306.)

§ 51.304 Combination grades.

(a) Combinations of the above grades may be used as follows:

(1) Combination U.S. Extra Fancy and U.S. Fancy;

(2) Combination U.S. Fancy and U.S. No. 1; and

(3) Combination U.S. No. 1 and U.S. Utility.

(b) Combinations other than these are not permitted in connection with the U.S. apple grades. When Combination grades are packed, at least 50 percent of the apples in any lot shall meet the requirements of the higher grade in the combination. (*See* § 51.306.)

Color Requirements

§ 51.305 Color requirements.

In addition to the requirements specified for the grades set forth in §§ 51.300 to 51.304, apples of these grades shall have the percentage of color specified for the variety in table I appearing in this section. All apple varieties other than those appearing in table I shall have no color requirements pertaining to these grades. For the solid red varieties, the percentage stated refers to the area of the surface which must be covered with a good shade of solid red characteristic of the variety: *Provided,* That an apple having color of

a lighter shade of solid red or striped red than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of good red characteristic of the variety required for the grade. For the striped red varieties, the percentage stated refers to the area of the surface in which the stripes of a good shade of red characteristic of the variety shall predominate over stripes of lighter red, green, or yellow. However, an apple having color of a lighter shade than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of stripes of a good red characteristic of the variety required for the grade. Faded brown stripes shall not be considered as color. (A) Color standards USDA Visual Aid APL-CC–1 (Plates a—e) consists of a folder containing the color requirements for apples set forth in this section and five plates illustrating minimum good shade of solid red or striped red color, minimum compensating color and shade not considered color, for the following 12 varieties: Red Delicious, Red Rome, Empire, Idared, Winesap, Jonathan, Stayman, McIntosh, Cortland, Rome Beauty, Delicious, and York.

These color standards will be available for examination and purchasing information in the Fresh Products Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, South Building, Washington, DC 20250; in any field office of the Fresh Products Branch; or upon request of any authorized inspector of the Fresh Fruit and Vegetable Inspection Service.

TABLE 1 [1]

[Only the varieties listed below shall be required to meet a minimum color requirement]

Variety	U.S. extra fancy (Percent)	U.S. fancy (Percent)	U.S. No. 1 (Percent)
Red Delicious	66	40	25
Red Rome	66	40	25
Empire	66	40	25
Idared	66	40	25
Winesap	66	40	25
Jonathan	66	40	25
Stayman	50	33	25
McIntosh	50	33	25
Cortland	50	33	25
Rome Beauty	50	33	25
Delicious	50	33	25
York	50	33	25

[1] Variations on varietal designations listed above must meet or exceed those color requirements listed.

Tolerances

§ 51.306 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the grades in 51.300, 51.301, 51.302, 51.303, and 51.304 the following tolerances are provided as specified:

(a) *Defects:* (1) U.S. Extra Fancy, U.S. Fancy, U.S. No. 1, and U.S. No. 1 Hail grades: 10 percent of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent, shall be allowed for apples which are seriously damaged, including therein not more than 1 percent for apples affected by decay or internal breakdown.

(2) *U.S. Utility grade:* 10 percent of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent, shall be allowed for apples which are seriously damaged by insects, and including in the total tolerance not more than 1 percent for apples affected by decay or internal breakdown.

(b) When applying the foregoing tolerances to Combination grades, no part of any tolerance shall be allowed to reduce, for the lot as a whole, the 50 percent of apples of the higher grade required in the combination, but individual containers shall have not less than 40 percent of the higher grade.

(c) *Size:* When size is designated by the numerical count for a container, not more than 10 percent of packages in the lot may fail to be fairly uniform.[1] When size is designated by minimum or maximum diameter, not more than 5 percent of the apples in any lot may be smaller than the designated minimum, and not more than 10 percent may be larger than the designated maximum. For Red Delicious or Golden Delicious varieties only, a combination of minimum diameter and/or weight may be used. When this designation is used, an individual apple will be considered to have met the minimum size requirement even if the apple is smaller than the minimum diameter, provided it is equal to or greater than the weight provided in table II of this section. However, not more than 5 percent of the apples in any lot may fail to meet either the minimum diameter or minimum weight when so designated. In addition, when Red Delicious or Golden Delicious apples are designated with diameter/weight combinations, they may only be designated according to the following table:

[1] "Fairly uniform" means the size of the fruit within the container does not vary more than ½ inch diameter from the smallest to largest fruit.

TABLE II

Red delicious	Golden delicious
2⅛ inches or 65 grams	63 grams
2¼ inches or 75 grams	70 grams
2⅜ inches or 84 grams	82 grams
2½ inches or 100 grams	95 grams
2⅝ inches or 115 grams	109 grams
2¾ inches or 139 grams	134 grams

Application of Tolerances

§ 51.307 Application of tolerances.

The contents of individual packages in the lot, are subject to the following limitations: *Provided,* That the averages for the entire lot are within the tolerances specified for the grade:

(a) Packages which contain more than 10 pounds:

(1) Shall have not more than one and one-half times a specified tolerance of 10 percent or more and not more than double a tolerance of less than 10 percent, except that at least one apple which is seriously damaged by insects or affected by decay or internal breakdown may be permitted in any package.

(2) [Reserved]

(b) Packages which contain 10 pounds or less:

(1) No package may have more than 3 times the tolerance specified, except that at least three defective apples may be permitted in any package: *Provided,* That not more than three apples or more than 18 percent (whichever is the larger amount) may be seriously damaged by insects or affected by decay or internal breakdown.

(2) [Reserved]

Methods of Sampling and Calculation of Percentages

§ 51.308 Methods of sampling and calculation of percentages.

(a) When the numerical count is marked on the container, containers are packed to weigh ten pounds or less, or in any container where the minimum diameter of the smallest apple does not vary more than ½ inch from the minimum diameter of the largest apple, percentages shall be calculated on the basis of count.

(b) In all other cases except those listed in paragraph (a) of this section, they shall be calculated on the basis of weight.

Condition After Storage or Transit

§ 51.309 Condition after storage or transit.

Decay, scald, or any other deterioration which may have developed on apples after they have been in storage or transit shall be considered as affecting condition and not the grade.

Packing Requirements

§ 51.310 Packing requirements.

(a) Apples tray packed or cell packed in cartons shall be arranged according to approved and recognized methods. Packs shall be at least fairly tight [2] or fairly well filled.[3]

(b) Closed cartons containing apples not tray or cell packed shall be fairly well filled or the pack shall be sufficiently tight to prevent any appreciable movement of the apples.

(c) Packs in wooden boxes or baskets shall be sufficiently tight to prevent any appreciable movement of apples within containers when the packages are closed. Each wrapped apple shall be completely enclosed by its individual wrapper.

(d) Apples on the shown face of any container shall be reasonably representative in size, color and quality of the contents.

(e) Tolerances: In order to allow for variations incident to proper packing, not more than 10 percent of the containers in any lot may fail to meet these requirements.

Marking Requirements

§ 51.311 Marking requirements.

Variety (or varieties if more than one is packed in the container), grade, and the numerical count or minimum diameter of apples packed in a closed container shall be indicated on the container. For apple lots utilizing the combined diameter/weight designations for Red Delicious and Golden Delicious varieties, the minimum diameter and minimum weight of apples packed in a closed container shall be indicated on the container.

(a) When the numerical count is not shown, the minimum diameter or, in the case of Red Delicious or Golden Delicious lots where minimum diameter/weight designations have been chosen, the minimum diameter and weight as designated in table II, shall be plainly stamped, stenciled or otherwise marked on the container in terms of whole inches, or whole inches and not less than eighth inch fractions thereof in the following manner: ''A'' inches or ''B'' grams, where ''A'' corresponds to one of the diameter measurements in terms of inches listed in table II and ''B'' corresponds to the weight measurement in grams as indicated in table II. Both diameter and weight must be shown using the word ''or'' between the given measurements.

(b) The word ''minimum,'' or its abbreviation, when following a diameter size marking, means that the apples are of the size marked or larger. (*See* §§ 51.306 and 51.307.)

Definitions

§ 51.312 Mature.

''Mature'' means that the apples have reached the stage of development which will insure the proper completion of the ripening process. Before a mature apple becomes overripe it will show varying degrees of firmness, depending upon the stage of the ripening process. The following terms are used for describing different stages of firmness of apples:

(a) *''Hard''* means apples with a tenacious flesh and starchy flavor.

(b) *''Firm''* means apples with a tenacious flesh but which are becoming crisp with a slightly starchy flavor, except the Delicious variety.

(c) *''Firm ripe''* means apples with crisp flesh except that the flesh of the Gano, Ben Davis, and Rome Beauty varieties may be slightly mealy.

(d) *''Ripe''* means apples with mealy flesh and soon to become soft for the variety.

§ 51.313 Overripe.

''Overripe'' means apples which have progressed beyond the stage of ripe, with flesh very mealy or soft, and past commercial utility.

§ 51.314 Clean.

''Clean'' means that the apples are free from excessive dirt, dust, spray residue, and other foreign material.

§ 51.315 Fairly well formed.

''Fairly well formed'' means that the apple may be slightly abnormal in shape but not to an extent which detracts materially from its appearance.

§ 51.316 Injury.

''Injury'' means any specific defect defined in this Section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which more than slightly detract from the appearance or the edible or shipping quality of the apple. In addition, specific defect measurements are based on an apple three inches in diameter. Corresponding smaller or larger areas would be allowed on smaller or larger fruit. Any reference to *''inch''* or *''inches in diameter''* refers to that of a circle of the specified diameter. Any reference to *''aggregate area,'' ''total area,''* or *''aggregate affected area''* means the gathering together of separate areas into one mass for the purpose of comparison to determine the extent affected. The following specific defects shall be considered as injury:

(a) Russeting in the stem cavity or calyx basin which cannot be seen when the apple is placed stem end or calyx end down on a flat surface shall not be considered in determining whether an apple is injured by russeting. Smooth net-like russeting outside of the stem cavity or calyx basin shall be considered as injury when an aggregate area of more than 10 percent of the surface is

[2] ''Fairly tight'' means that apples are of the proper size for molds or cell compartments in which they are packed, and that molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible.

[3] ''Fairly well filled'' means that the net weight of apples in containers ranging from 2,100 to 2,900 cubic inch capacity is not less than 37 pounds for Cortland, Gravenstein, Jonathan, McIntosh and Golden Delicious varieties and not less than 40 pounds for all other varieties.

covered, and the color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russeting when the appearance is affected to a greater extent than the amount permitted above.

(b) Sunburn or sprayburn, when the discolored area does not blend into the normal color of the fruit.

(c) Dark brown or black limb rubs which affect a total area of more than one-fourth inch in diameter, except that light brown limb rubs of a russet character shall be considered under the definition of injury by russeting.

(d) Hail marks, drought spots, other similar depressions or scars:

(1) When the skin is broken, whether healed or unhealed;

(2) When there is appreciable discoloration of the surface;

(3) When any surface indentation exceeds one-sixteenth inch in depth;

(4) When any surface indentation exceeds one-eighth inch in diameter; or

(5) When the aggregate affected area of such spots exceeds one-half inch in diameter.

(e) Bruises which are not slight and incident to proper handling and packing, and which are greater than:

(1) 1/8 inch in depth;

(2) 5/8 inch in diameter;

(3) any combination of lesser bruises which detract from the appearance or edible quality of the apple to an extent greater than any one bruise described in paragraphs (1) or (2) of this section.

(f) Brown surface discoloration when caused by delayed sunburn, surface scald, or any other means and affects an area greater than 1/4 inch in diameter.

(g) Disease: (1) Cedar rust infection which affects a total area of more than three-sixteenths inch in diameter.

(2) Sooty blotch or fly speck which is thinly scattered over more than 5 percent of the surface, or dark, heavily concentrated spots which affect an area of more than one-fourth inch in diameter.

(3) Red skin spots which are thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-fourth inch in diameter.

(h) Insects: (1) Any healed sting or healed stings which affect a total area of more than one-eighth inch in diameter including any encircling discolored rings.

(2) Worm holes.

§ 51.317 Damage.

''*Damage*'' means any specific defect defined in this section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detract from the appearance, or the edible or shipping quality of the apple. In addition, specific defect measurements are based on an apple three inches in diameter. Corresponding smaller or larger areas would be allowed on smaller or larger fruit. Any reference to ''*inch*'' or ''*inches in diameter*'' refers to that of a circle of the specified diameter. Any reference to ''*aggregate area,*'' ''*total area,*'' or ''*aggregate affected area*'' means the gathering together of separate areas into one mass for the purpose of comparison to determine the extent affected. The following specific defects shall be considered as damage:

(a) Russeting in the stem cavity or calyx basin which cannot be seen when the apple is placed stem end or calyx end down on a flat surface shall not be considered in determining whether an apple is damaged by russeting, except that excessively rough or bark-like russeting in the stem cavity or calyx basin shall be considered as damage when the appearance of the apple is materially affected. The following types and amounts of russeting outside of the stem cavity or calyx basin shall be considered as damage:

(1) Russeting which is excessively rough on Roxbury Russet and other similar varieties.

(2) Smooth net-like russeting, when an aggregate area of more than 15 percent of the surface is covered, and the color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russeting when the appearance is affected to a greater extent than the amount permitted above.

(3) Smooth solid russeting, when an aggregate area of more than 5 percent of the surface is covered, and the pattern and color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous solid russeting when the appearance is affected to a greater extent than the above amount permitted.

(4) Slightly rough russeting which covers an aggregate area of more than one-half inch in diameter.

(5) Rough russeting which covers an aggregate area of more than one-fourth inch in diameter.

(b) Sunburn or sprayburn which has caused blistering or cracking of the skin, or when the discolored area does not blend into the normal color of the fruit unless the injury can be classed as russeting.

(c) Limb rubs which affect a total area of more than one-half inch in diameter, except that light brown limb rubs of a russet character shall be considered under the definition of damage by russeting.

(d) Hail marks, drought spots, other similar depressions, or scars:

(1) When any unhealed mark is present;

(2) When any surface indentation exceeds one-eighth inch in depth;

(3) When the skin has not been broken and the aggregate affected area exceeds one-half inch in diameter; or

(4) When the skin has been broken and well healed, and the aggregate affected area exceeds one-fourth inch in diameter.

(e) Stem or calyx cracks which are not well healed, or well healed stem or calyx cracks which exceed an aggregate length of one-fourth inch.

(f) Invisible water core existing around the core and extending to water core in the vascular bundles, or surrounding the vascular bundles when the affected areas surrounding three or more vascular bundles meet or coalesce, or existing in more than a slight degree outside the circular area formed by the vascular bundles. *Provided,* That invisible water core shall not be scored as damage against the Fuji variety of apples under any circumstances.

(g) Bruises which are not slight and incident to proper handling and packing, and which are greater than:

(1) 3/16 inch in depth;

(2) 7/8 inch in diameter;

(3) any combination of lesser bruises which detract from the appearance or edible quality of the apple to an extent greater than any one bruise described in paragraphs (1) or (2) of this section.

(h) Brown surface discoloration when caused by delayed sunburn, surface scald, or any other means and affects an area greater than 1/2 inch in diameter.

(i) Disease: (1) Scab spots which affect a total area of more than one-fourth inch in diameter.

(2) Cedar rust infection which affects a total area of more than one-fourth inch in diameter.

(3) Sooty blotch or fly speck which is thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-half inch in diameter.

(4) Red skin spots which are thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-half inch in diameter.

(5) Bitter pit or Jonathan spot when one or more spots affects the surface of the apple.

(j) Insects: (1) Any healed sting or healed stings which affect a total area of

more than three-sixteenths inch in diameter including any encircling discolored rings.

(2) Worm holes.

§ 51.318 Serious damage.

''Serious damage'' means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects which seriously detract from the appearance, or the edible or shipping quality of the apple. In addition, specific defect measurements are based on an apple three inches in diameter. Corresponding smaller or larger areas would be allowed on smaller or larger fruit. Any reference to ''inch'' or ''inches in diameter'' refers to that of a circle of the specified diameter. Any reference to ''aggregate area,'' ''total area,'' or ''aggregate affected area'' means the gathering together of separate areas into one mass for the purpose of comparison to determine the extent affected. The following specific defects shall be considered as serious damage:

(a) The following types and amounts of russeting shall be considered as serious damage:

(1) Smooth solid russeting, when more than one-half of the surface in the aggregate is covered, including any russeting in the stem cavity or calyx basin, or slightly rough, or excessively rough or bark-like russeting, which detracts from the appearance of the fruit to a greater extent than the amount of smooth solid russeting permitted: *Provided,* That any amount of russeting shall be permitted on Roxbury Russet and other similar varieties.

(2) [Reserved]

(b) Sunburn or sprayburn which seriously detracts from the appearance of the fruit.

(c) Limb rubs which affect more than one-tenth of the surface in the aggregate.

(d) Hail marks, drought spots, or scars, if they materially deform or disfigure the fruit, or if such defects affect more than one-tenth of the surface in the aggregate: *Provided,* That no hail marks which are unhealed shall be permitted and not more than an aggregate area of one-half inch shall be allowed for well healed hail marks where the skin has been broken.

(e) Stem or calyx cracks which are not well healed, or well healed stem or calyx cracks which exceed an aggregate length of one-half inch.

(f) Visible water core which affects an area of more than one-half inch in diameter.

(g) *Disease:* (1) Scab spots which affect a total area of more than three-fourths inch in diameter.

(2) Cedar rust infection which affects a total area of more than three-fourths inch in diameter.

(3) Sooty blotch or fly speck which affects more than one-third of the surface.

(4) Red skin spots which affect more than one-third of the surface.

(5) Bitter pit or Jonathan spot which is thinly scattered over more than one-tenth of the surface.

(h) *Insects:* (1) Healed stings which affect a total area of more than one-fourth inch in diameter including any encircling discolored rings.

(2) Worm holes.

(i) Bruises which are not slight and incident to proper handling and packing, and which are greater than:

(1) 3/8 inch in depth;

(2) 1 1/8 inches in diameter;

(3) any combination of lesser bruises which detract from the appearance or edible quality of the apple to an extent greater than any one bruise described in paragraph (i)(1) or (2) of this section.

(j) Brown surface discoloration when caused by delayed sunburn, surface scald, or any other means and affects an area greater than 3/4 inch in diameter.

§ 51.319 Seriously deformed.

''Seriously deformed'' means that the apple is so badly misshapen that its appearance is seriously affected.

§ 51.320 Diameter.

When measuring for minimum size, ''diameter'' means the greatest dimension of the apple measured at right angles to a line from stem to blossom end. When measuring for maximum size, ''diameter'' means the smallest dimension of the apple determined by passing the apple through a round opening in any position.

U.S. Condition Standards for Export

§ 51.321 U.S. Condition Standards for Export.[4]

(a) Not more than 5 percent of the apples in any lot shall be further advanced in maturity than firm ripe.

(b) Not more than 5 percent of the apples in any lot shall be damaged by storage scab.

(c) Not more than a total of 5 percent of the apples in any lot shall be affected by scald, internal breakdown, freezing injury, or decay; or damaged by bitter pit, Jonathan spot, water core[5] except that invisible water core shall not be scored as damage when these condition standards are applied to the Fuji variety of apples, or other condition factors: *Provided,* That:

(1) Not more than a total of 2 percent shall be allowed for apples affected by decay and soft scald;

(2) Not more than 2 percent shall be allowed for apples affected by internal breakdown;

(d) Container packs shall comply with packing requirements specified in § 51.310 of the United States Standards for Grades of Apples.

(e) Any lot of apples shall be considered as meeting the U.S. Condition Standards for Export if the entire lot averages within the requirements specified: *Provided,* That no package in any lot shall have more than double the percentages specified, except that for packages which contain 10 pounds or less, individual packages in any lot may have not more than three times the tolerance or three apples (whichever is the greater amount).

Metric Conversion Table

§ 51.322 Metric conversion table.

Inches	Millimeters (mm)
1/16 equals	1.6
1/8 equals	3.2
3/16 equals	4.8
1/4 equals	6.4
3/8 equals	9.5
1/2 equals	12.7
5/8 equals	15.9
3/4 equals	19.1
7/8 equals	22.2
1 1/8 equals	28.6
2 1/8 equals	54.0
2 1/4 equals	57.2
2 3/8 equals	60.3
2 1/2 equals	63.5
2 3/4 equals	69.9

Cubic Inches	Cubic Centimeters (cc)
2100 equals	34,412.7
2900 equals	47,522.3

Pounds	Grams (g)
10 equals	4,536.0
37 equals	16,783.2
40 equals	18,144.0

[4] These standards may be applied to domestic shipments of apples as well as export lots, and may be referred to as ''U.S. Condition Standards.''

[5] ''Damage by water core'' means externally invisible water core existing around the core and extending to water core in the vascular bundles, or surrounding the vascular bundles when the affected areas surrounding three or more vascular bundles meet or coalesce, or existing in more than slight degree outside the circular area formed by the vascular bundles, or any externally visible water core.

Dated: November 8, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29034 Filed 11–18–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

[Doc. No. AO–368–A29; DA–01–06]

Milk in the Pacific Northwest Marketing Area; Interim Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This order amends certain pooling provisions of the Pacific Northwest Federal milk order on an interim basis. This interim order implements amendments to the *Pool plant* provisions which establish a cooperative manufacturing plant provision and a procedure for ''system pooling'' by cooperative manufacturing plants. For the *Producer milk* provisions, this interim order implements amendments that establish a standard of at least 3 days' milk production for the number of days during the month that the milk of a producer needs to be delivered to a pool plant (a ''touch-base'' standard) in order for the rest of the milk of that producer to be eligible to be diverted to nonpool plants, provides authority to the Market Administrator to adjust the ''touch-base'' standard, and establishes a year-round diversion limit of 80 percent of total receipts for pool plants. More than the required number of producers in the Pacific Northwest marketing area have approved the issuance of the interim order as amended.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, Stop 0231-Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address *Gino.Tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Prior documents in this proceeding:

Notice of Hearing: Issued November 14, 2001; published November 19, 2001 (66 FR 57889).

Tentative Final Decision: Issued August 30, 2002; published September 6, 2002 (67 FR 56936).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Pacific Northwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Pacific Northwest order:

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Pacific Northwest marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Pacific Northwest order, as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Pacific Northwest order, as hereby amended on an interim basis, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Additional Findings. It is necessary and in the public interest to make these interim amendments to the Pacific Northwest order effective January 1, 2003. Any delay beyond that date would tend to disrupt the orderly

marketing of milk in the aforesaid marketing area.

The interim amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on August 30, 2002.

The changes that result from these interim amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim order amendments effective on January 1, 2003. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this interim order amending the Pacific Northwest order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the interim order amending the Pacific Northwest order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1124

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Pacific Northwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended on an interim basis, as follows:

The authority citation for 7 CFR part 1124 reads as follows:

Authority: 7 U.S.C. 601–674.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.7 is amended by:

a. Removing paragraphs (c)(2) and (c)(3);

b. Redesignating paragraph (c)(4) as (c)(2);

c. Adding new paragraphs (d) and (f); and

d. Revising paragraph (g).

The revisions and additions read as follows:

§ 1124.7 Pool plant.

* * * * *

(d) A manufacturing plant located within the marketing area and operated by a cooperative association, or its wholly owned subsidiary, if, during the month, or the immediately preceding 12-month period ending with the current month, 20 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other that Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association, or its wholly owned subsidiary, and from plants of the cooperative association, or its wholly owned subsidiary, for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b), or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(3) A request is filed in writing with the market administrator before the first day of the month for which it is to be effective. The request will remain in effect until a cancellation request is filed in writing with the market administrator before the first day of the month for which the cancellation is to be effective.

* * * * *

(f) A system of two or more plants identified in § 1124.7(d) operated by one or more cooperative handlers may qualify for pooling by meeting the above shipping requirements subject to the following additional requirements:

(1) The cooperative handler(s) establishing the system submits a written request to the market administrator on or before the first day of the month for which the system is to be effective requesting that such plants qualify as a system. Such request will contain a list of the plants participating in the system in the order, beginning with the last plant, in which the plants will be dropped from the system if the system fails to qualify. Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system until the handler(s) establishing the system submits a written request before the first day of the month to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system. In the event of an ownership change or the business failure of a handler that is a participant in the system, the system may be reorganized to reflect such a change if a written request to file a new marketing agreement is submitted to the market administrator; and

(2) If a system fails to qualify under the requirement of this paragraph, the handler responsible for qualifying the system shall notify the market administrator of which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continue up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(g) The applicable shipping percentage of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired to be effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

* * * * *

2. Section 1124.13 is amended by:

a. Redesignating paragraphs (e)(1) through (5) as paragraphs (e)(2) through (6);

b. Adding a new paragraph (e)(1); and

c. Revising redesignated paragraphs (e)(2),(e)(5), and (e)(6).

The revisions and additions read as follows:

§ 1124.13 Producer Milk.

* * * * *

(e) * * *

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least 3 days' production of such dairy farmer's production is physically received at a pool plant during the month.

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 80 percent.

* * * * *

(5) Any milk diverted in excess of the limits prescribed in paragraph (e)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1124.12(b)(5).

(6) The delivery day requirement in paragraph (e)(1) of this section and the diversion percentage in paragraph (e)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure the orderly marketing and efficient handling of milk in the marketing area. Before making such finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired to be effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.

Dated: November 8, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29032 Filed 11–18–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1951 and 3550

Servicing and Collections

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule explains the procedures used by certain Rural Development Agencies and the Farm Service Agency, Farm Loan Programs to refer accounts to the Department of the Treasury for administrative offset (TOP) and cross-servicing as required by the Debt Collection Improvement Act (DCIA), and by the Treasury Department's rules regarding the Federal Claims Collection Standards concerning administrative offset, cross-servicing procedures, and Treasury Offset of Internal Revenue Service (IRS) tax refund payments.

EFFECTIVE DATE: December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Barry G. Sykes, Chief, Program Reporting Branch, Program Management Division, Rural Development, USDA, Office of the Deputy Chief Financial Officer, P.O. Box 200011, FC–351, St. Louis, Missouri 63120–0011, Telephone (314) 539–2222.

SUPPLEMENTARY INFORMATION:

Classification

This action is not subject to the provisions of Executive Order 12866 since it involves only internal Agency management. This action is not published for prior notice and comment under the Administrative Procedure Act since it involves only internal Agency management and publication for comment is unnecessary and contrary to the public interest.

Programs Affected

The catalog of Federal Domestic Assistance programs impacted by this action are as follows:

10.404—Emergency Loans
10.405—Farm Labor Housing Loans and Grants
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Very Low to Moderate Income Housing Loans
10.411—Rural Housing Site Loans and Self-Help Housing Land Development Loans
10.415—Rural Rental Housing Loans
10.417—Very Low-Income Housing Repair Loans and Grants
10.420—Rural Self-Help Housing Technical Assistance
10.427—Rural Rental Assistance Payments
10.760—Water and Waste Disposal Systems for Rural Communities
10.766—Community Facilities Loans and Grants
10.767—Intermediary Relending Program
10.768—Business and Industry Loans
10.770—Water and Waste Disposal Loans and Grants (section 306C)
10.854—Rural Economic Development Loans and Grants

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) Unless otherwise specifically provided, all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before litigation against the Department is instituted.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), the information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0119. This rule does not revise or impose any new information collection requirements from those approved by OMB.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may

result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The Agencies have determined that this action does not constitute a major Federal action significantly affecting the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned have determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Thus, large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

Discussion of Final Rule

The final rule adopts the Department of Treasury (Treasury) Debt Collection procedures required by the Debt Collection Improvement Act (DCIA), Pub. L. 104–434, April 26, 1996, the Federal Claims Collection Standards concerning administrative offset at 31 CFR 901.3, cross-servicing procedures at 31 CFR part 285, subpart A and Treasury Offset of Internal Revenue Service (IRS) tax refund payments at 31 CFR 285.2. The Rural Business-Cooperative Service and the Rural Housing Service, Community Facilities program, both part of the Rural Development mission area, are adopting this rule to enable it to refer delinquent accounts to Treasury for administrative offset (TOP) and cross-servicing as required by the DCIA. A new section has been added explaining the Farm Service Agency (FSA), Farm Loan Programs (FLP) procedures for referring accounts to Treasury. Additional revisions have been made for readability and to make corrections to conform to Treasury regulations which have consolidated the IRS offset program with the Treasury Offset Program (TOP). Therefore, this rule revises the reference contained in the Rural Housing Service's regulations at 7 CFR 3550.210(a) to reference the correct authorities for conducting IRS offsets.

Rural Development is also revising its servicing and collections regulations to reflect that the Rural Housing Service, for its Single Family Housing and Multi-Family Housing programs and the Rural Utilities Service for its Water and Environmental program have developed their own servicing handbooks providing internal administrative guidance to agency personnel for their Treasury Offset and Cross-Servicing procedures. Farm Services Agency is amending its salary offset guidance to clarify when salary offset will begin and to clarify when notification will be sent to the borrower. There is no additional burden being imposed upon the public and no financial impact imposed on the Government or on the public as a result of this action.

List of Subjects

7 CFR Part 1951

Accounting, Accounting servicing, Credit, Loan programs—Agriculture, Low and moderate income housing loans—Servicing.

7 CFR Part 3550

Direct single family housing loan and grants.

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart C—Offsets of Federal Payments to USDA Agency Borrowers

2. Section 1951.101 is revised to read as follows:

§ 1951.101 General.

Federal debt collection statutes provide for the use of administrative, salary, and Internal Revenue Service (IRS) offsets by government agencies, including the Farm Service Agency (FSA), Rural Housing Service (RHS) for its community facility program, and Rural Business-Cooperative Service (RBS), herein referred to collectively as ''United States Department of Agriculture (USDA) Agency,'' to collect delinquent debts. Any money that is or may become payable from the United States to an individual or entity indebted to a USDA Agency may be subject to offset for the collection of a debt owed to a USDA Agency. In addition, money may be collected from the debtor's retirement payments for delinquent amounts owed to the USDA Agency if the debtor is an employee or retiree of a Federal agency, the U.S. Postal Service, the Postal Rate Commission, or a member of the U.S. Armed Forces or the Reserve. Amounts collected will be processed as regular payments and credited to the borrower's account. USDA Agencies will process requests by other Federal agencies for offset in accordance with § 1951.102 of this subpart. This subpart does not apply to direct single family housing loans, direct multi-family housing loans, and the Rural Utilities Service. Section 1951.136 of this subpart only applies to RHS for its community facility program and RBS for the offset of Federal payments. Nothing in this subpart affects the common law right of set off available to USDA Agencies.

2a. In section 1951.102, paragraph (b)(1) is revised to read as follows:

§ 1951.102 Administrative offset.

* * * * *

(b) * * *

(1) *Agency* means Farm Service Agency, Farm Loan Programs; Rural Housing Service, except direct Single Family Housing loans and direct Multi-Family Housing loans; and Rural Business-Cooperative Service, or any successor agency.

* * * * *

3. In Section 1951.111 the introductory text and paragraph (d) (1) are revised to read as follows:

§ 1951.111 Salary offset.

Salary offset may be used to collect debts arising from delinquent USDA Agency loans and other debts which

arise through such activities as theft, embezzlement, fraud, salary overpayments, under withholding of amounts payable for life and health insurance, and any amount owed by former employees from loss of federal funds through negligence and other matters. Salary offset may also be used by other Federal agencies to collect delinquent debts owed to them by employees of the USDA Agency, excluding county committee members. Administrative offset, rather than salary offset, will be used to collect money from Federal employee retirement benefits. For delinquent Farm Loan Programs direct loans, salary offset will not begin until the borrower has been notified of servicing options in accordance with 7 CFR 1951.907. In addition, for Farm Loan Programs direct loans, salary offset will not be instituted if the Federal salary has been considered on the Farm and Home Plan, and it was determined the funds were to be used for another purpose other than payment on the USDA Agency loan. For Farm Loan Programs guaranteed debtors, salary offset can not begin until a final loss claim has been paid. When salary offset is used, payment for the debt will be deducted from the employee's pay and sent directly to the creditor agency. Not more than 15 percent of the employee's disposable pay can be offset per pay period, unless the employee agrees to a larger amount. The debt does not have to be reduced to judgment or be undisputed, and the payment does not have to be covered by a security instrument. This section describes the procedures which must be followed before the USDA Agency can ask a Federal agency to offset any amount against an employee's salary.

* * * * *

(d) *Notice to debtor.*

(1) After the Certifying Official determines that collection by salary offset is feasible, the debtor should be notified within 15 calendar days after the salary offset determination. This notice will notify the debtor of intended salary offset at least 30 days before the salary offset begins. For Farm Loan Programs direct loans, this notice will be sent after the borrower is over 90 days past due and immediately after sending notification of servicing rights in accordance with 7 CFR 1951.907 of this subpart. For Farm Loan Programs guaranteed debtors, this notice will be sent after a final loss claim has been paid. The salary offset determination notice will be delivered to the debtor by regular mail.

* * * * *

4. Section 1951.136 and 1951.137 are added to read as follows:

§ 1951.136 Procedures for Department of Treasury Offset and Cross-Servicing for the Rural Housing Service (Community Facility Program only) and the Rural Business-Cooperative Service.

(a) The National Offices of the Rural Housing Service (RHS), Community Facilities (CF) and the Rural Business-Cooperative Service (RBS) will refer past due, legally enforceable debts which are over 180 days delinquent to the Secretary of the Treasury for collection by centralized administrative offset (TOP), Internal Revenue Service offset administered through TOP and Treasury's Cross-Servicing (Cross-Servicing) Program, which centralizes all Government debt collection actions. A borrower with a workout agreement in place, in bankruptcy or litigation, or meeting other exclusion criteria, may be excluded from TOP or Cross-Servicing.

(b) A 60 day due process notice will be sent to borrowers subject to TOP or Cross-Servicing. The borrower will be given 60 days to resolve any delinquency before the debt is reported to Treasury. The notice will include:

(1) The nature and amount of the debt, the intention of the Agency to collect the debt through TOP or Cross-Servicing, and an explanation of the debtor's rights;

(2) An opportunity to inspect and copy the records related to the debt from the Agency;

(3) An opportunity to review the matter within the Agency or the National Appeals Division, if there has not been a previous opportunity to appeal the offset; and

(4) An opportunity to enter into a written repayment agreement.

(c) In referring debt to the Department of Treasury the Agency will certify that:

(1) The debt is past due and legally enforceable in the amount submitted and the Agency will ensure that collections are properly credited to the debt;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within 10 years after the Agency's right of action accrues;

(3) The Agency has made reasonable efforts to obtain payment; and

(4) Payments that are prohibited by law from being offset are exempt from centralized administrative offset.

§ 1951.137 Procedures for Treasury Offset and Cross-Servicing for the Farm Service Agency (FSA) Farm Loan Programs

(a) The Farm Service Agency, Farm Loan Programs, will refer past due, legally enforceable debts which are over 180 days delinquent to the Secretary of the Treasury for collection by centralized administrative offset (TOP), Internal Revenue Service offset administered through TOP and Treasury's Cross-Servicing (Cross-Servicing) Program, which centralizes all Government debt collection actions. A borrower with a workout agreement in place, in bankruptcy or litigation, or meeting other exclusion criteria, may be excluded from TOP or Cross-Servicing. Guaranteed debtors will only be referred to TOP upon confirmation of payment on a final loss claim.

(b) A 60 day due process notice will be sent to borrowers subject to TOP or Cross-Servicing by the Director of Kansas City Finance Office. The borrower will be given 60 days to resolve any delinquency before the debt is reported to Treasury. The notice will include:

(1) The nature and amount of the debt, the intention of the Agency to collect the debt through TOP or Cross-Servicing, and an explanation of the debtor's rights;

(2) An opportunity to inspect and copy the records related to the debt, from the Agency;

(3) An opportunity to review the matter within the Agency; and

(4) An opportunity to enter into a written repayment agreement.

(c) In referring debt to the Department of Treasury the Agency will certify that:

(1) The debt is past due and legally enforceable in the amount submitted and the Agency will ensure that collections are properly credited to the debt;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within 10 years after the Agency's right of action accrues;

(3) The Agency has made reasonable efforts to obtain payment; and

(4) Payments that are prohibited by law from being offset are exempt from centralized administrative offset.

PART 3550—[AMENDED]

5. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301 and 42 U.S.C. 1480.

6. In § 3550.210, paragraph (a) is revised to read as follows:

(a) *IRS offset.* RHS may take action to effect offset of claims due RHS against tax refunds due to RHS debtors under 31 U.S.C. 3720a and 31 CFR 285.2.

Dated: October 2, 2002.

William F. Hagy III,

Acting Administrator, Rural Business-Cooperative Service.

Dated: October 2, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

Dated: October 3, 2002.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

Dated: October 25, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–29050 Filed 11–18–02; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

[REG–251003–96]

RIN 1545–AR99

Statement of Procedural Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Amendments to Statement of Procedural Rules.

SUMMARY: This document amends the Statement of Procedural Rules to reflect changes effected by the Electronic Freedom of Information Act Amendments of 1996 to update organizational titles and addresses, and to make certain changes in the IRS's procedures for processing Freedom of Information Act requests. The rules affect persons requesting records from the IRS.

DATES: Effective Date: December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Michael B. Frosch, 202–622–4590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final rules amending the Statement of Procedural Rules (SPR) (26 CFR 601.701 and 26 CFR 601.702), issued under the authority contained in 5 U.S.C. 301 and 552. The SPR is being updated to reflect changes effected by the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Public Law 104–231, 110 Stat. 2422. Other amendments conform to procedures set forth in the Department of the Treasury's regulations on disclosure of records under the FOIA. 65 FR 40503 (June 30, 2000). Other amendments reflect procedures heretofore only available to the public in the Internal Revenue Manual, which is maintained in the IRS Freedom of Information Reading Room. The SPR is also updated to reflect changes in title or nomenclature and to reflect changes of addresses to be contacted for Freedom of Information requests in light of the IRS reorganization mandated by section 1001 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA).

Discussion of Amendments in Section 601.701

Section 601.701 is removed and reserved. Section 601.701 was simply a restatement of the statute as interpreted by the courts and does not need to be repeated in regulations.

Discussion of Amendments in Part 601.702

The amendments are described in the order of the sections of the SPR being amended.

Paragraph (a)(1) is amended to reflect changes in nomenclature.

Paragraph (a)(2) is amended to reflect changes in nomenclature.

Paragraph (b)(1) is amended to incorporate changes required by the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). Specifically, this provision implements the new statutory requirement that any records that an agency processes and discloses in response to a FOIA request that the agency determines to have become or are likely to become the subject of subsequent requests for substantially the same records be placed in public reading rooms so that they are readily available to potential FOIA requesters. This provision also implements the statutory mandate to enhance the availability of reading room records by requiring: (1) That reading room records created on or after November 1, 1996, be available to the public by electronic means, *e.g.*, the Internet, by November 1, 1997; and (2) an index of reading room records shall be made available on the Internet by December 31, 1999.

Paragraph (b)(2) is amended to implement the EFOIA requirement that the extent of any deletion of information be indicated on the portion of the record which is made available or published, and where technically feasible, that the deletion be indicated at the place in the record where made.

Paragraph (b)(3) is amended to reflect a change in the room location of the Freedom of Information Reading Room at the National Office. As a consequence of RRA, the IRS no longer has regional offices, and, therefore, the regional reading rooms have been eliminated. Paragraph (b)(3)(iii) is revised to clarify that fees shall not be charged for copying materials in the Freedom of Information Reading Room. Paragraph (b)(3)(iv), pertaining to mailing reading room material to other IRS office locations for personal inspection or directly to the requester, is removed. Neither the FOIA nor Department of the Treasury regulations or policy requires the IRS to provide this assistance to persons unable or unwilling to use the Freedom of Information Reading Room. The IRS determined that the administrative cost of providing such assistance outweighed the marginal public benefit, especially since all required records are on the Internet.

Paragraph (c)(1) is amended to clarify IRS practice regarding the processing of valid FOIA requests within the statutory time period. It explicitly provides that invalid requests are not subject to the time constraints provided in paragraphs (c)(9) through (11). Newly designated paragraph (c)(1)(ii) reflects IRS practice that requests for the continuing production of records created after the date of receipt of the request shall not be honored.

Paragraph (c)(2), a new provision, covers electronic format records. It implements the EFOIA requirement that the agency provide a requested record in any form or format requested if the record is readily reproducible by the agency in that form or format. Furthermore, it directs the IRS to make reasonable efforts to search for records in electronic form or format.

Paragraph (c)(3), an amendment of former paragraph (c)(2) relating to requests for records not in control of the IRS, contains only minor revisions of word usage and cross references.

Paragraph (c)(4), an amendment of former paragraph (c)(3), concerning the form of a request, is revised to clarify the procedures for making requests when the requesters are uncertain as to which office they should submit their requests; and to clarify IRS practice when requesters have an outstanding FOIA fee balance when subsequent requests are received.

Paragraph (c)(5), an amendment of former paragraph (c)(4), dealing with reasonable description of records and identity and legal entitlement of the requester, is clarified to conform to section 6103(e)(1)(D) and the Conference and Practice requirements of 26 CFR 601.503 as to who may make a request on behalf of a corporation; to require the submission of the taxpayer identification number where the request seeks tax information to ensure the

requester's legal entitlement to statutorily protected records; and to conform to case law which permits the submission of a sworn statement, under penalty of perjury, in lieu of a notarized statement, as to proof of identity.

Paragraph (c)(6), a new provision, implements the EFOIA requirement that agencies provide for expedited processing in cases where a requester demonstrates a compelling need. The provision defines compelling need; establishes the procedures for requesting expedited processing; sets a ten day time limit for determining whether a request for expedited processing will be granted; and sets a ten day time limit for deciding appeals of initial determinations to deny expedited processing.

Paragraph (c)(7), a revision of paragraph (c)(5) concerning the date of receipt of a request, is amended to eliminate the requirement that the disclosure office issue a separate letter advising of the statutory period for response, where the final determination letter will be sent before the expiration of the statutory period or where a voluntary or statutory extension of time letter is sent.

Paragraph (c)(8), a revision of paragraph (c)(6), is amended: (1) To eliminate language that the IRS is not required to tabulate or compile information for the purpose of creating a record (deemed confusing in light of EFOIA); and (2) to clarify that, as a general rule, only records in the possession and control of the IRS on the date of receipt of the FOIA request shall be considered in determining records responsive to the request.

Paragraph (c)(9), an amendment of paragraph (c)(7), is revised to reflect nomenclature changes; to clarify IRS official's discretion not to issue a statement of fees before issuance of the determination letter, but rather to disclose the records simultaneous with the issuance of the determination letter under this provision; to clarify that fees will be incurred for the photocopying of records being made available for inspection; and to establish that IRS denial letters should identify the date the request was received in the appropriate disclosure office and the number of pages at issue.

Paragraph (c)(10), an amendment of paragraph (c)(8) concerning administrative appeals, is amended to clarify that administrative appeals may be submitted from denials of fee waiver or reduction requests, as well as adverse fee category determinations, in addition to denials of records, and to reflect changes in nomenclature.

Paragraph (c)(11), an amendment of paragraph (c)(9) relating to the unusual circumstances where extensions of time may be granted and the aggregation of requests, is amended to provide that consultations with business submitters regarding requests for disclosure of their information in records, in conformance with new paragraph (g), is one type of unusual circumstance; and to clarify that searches in Federal Records Centers or other storage locations for IRS records stored in such facilities is another. New paragraph (c)(11)(ii) is added to permit aggregation of requests, as authorized in EFOIA.

Paragraph (c)(12), an amendment of paragraph (c)(10) on failure to comply, is amended in light of EFOIA to define the exceptional circumstances under which a court may retain jurisdiction and allow the IRS additional time to complete its processing of a FOIA request.

Paragraph (c)(13), an amendment of paragraph (c)(11) relating to judicial review, is revised to clarify that judicial review may be sought from actual or constructive denials of fee waiver or reduction requests, as well as adverse fee category determinations, in addition to denials of records; and to change the office to which service of process on the IRS is to be made, from General Legal Services (GLS) to the Associate Chief Counsel (Procedure and Administration) (PA).

Paragraph (c)(14), an amendment of paragraph (c)(12), contains no revisions. Former paragraph (c)(13) is removed.

Paragraph (d) is amended to clarify that, for those types of records described in paragraphs (d) (1) through (8), requests denominated as Freedom of Information Act requests shall be diverted to other procedures provided for by the Internal Revenue Code for their appropriate handling and fee schedules, which procedures are generally as, or more expeditious than, handling through FOIA.

Paragraph (d)(1) is amended to reflect that fees to be charged for requests for photocopies of tax returns and certain transcripts, made on IRS form 4506, ''Request for Copy or Transcript of Tax Form'' will be reasonable fees as determined by the Commissioner from time to time.

Paragraph (d)(2) is amended to reflect a change in citation form.

Paragraph (d)(3) is amended to reflect changes in the manner in which members of the public may obtain access to information relating to certain tax exempt organizations and certain trusts, consistent with section 6104.

Paragraph (d)(4) is amended to reflect changes in the manner in which members of the public may obtain access to applications of certain organizations for tax exemption, consistent with section 6104.

Paragraph (d)(5) is amended to reflect changes in which members of the public may obtain access to information relating to certain deferred compensation plans and accounts, consistent with section 6104.

Paragraph (d)(7) is amended to clarify that comments received in response to solicitations for public comments, prepublication comments, as well as comments received in response to notices of proposed rulemaking, are available for inspection upon written request as set forth in the regulations; and to reflect changes in nomenclature and mailing address.

Paragraph (d)(8) is amended to reflect that form 7249, ''Offer Acceptance Report,'' is the form which records accepted offers-in-compromise.

Paragraph (f)(1) is amended to reflect changes in nomenclature.

Paragraph (f)(2) is amended to remove redundant information and to clarify that administrative appeals shall be received within 35 days of the date of the initial denial letter.

Paragraph (f)(3) is amended to clarify that news media entities include computerized news services; to clarify that the category of educational institution requester does not include individuals wanting records for use in meeting individual academic research requirements; to confirm that the IRS shall determine the category of a requester based upon a review of the requester's submission and the IRS' own records; and to conform to Treasury regulations which permit only duplication fees to be charged to individual requesters seeking records about themselves maintained in agency systems of records.

Paragraph (f)(4) is reorganized and amended to reflect changes in nomenclature.

Paragraph (f)(5) is amended to clarify that fees for searches for non-computerized records are charged at the salary rate (basic pay plus 16 percent) of the employee making the search; to clarify that searches for computerized records are charged based upon the actual direct cost of the search, including computer search time, runs, and the operator's salary; to clarify that services or material requested under, but not required by, the Freedom of Information Act may be chargeable to the requester at the actual direct cost in the discretion of the appropriate agency official; to reflect that the actual costs of duplicating videotapes and audiotapes will be borne by the requester; to

conform the fees chargeable for certain information relating to exempt organizations and deferred compensation plans to the fees charged for material requested under the Freedom of Information Act; to conform to case law that does not require agency officials to create new records where the condition of the existing record responsive to the request does not enable legible copies to be duplicated.

Paragraph (f)(6) is amended to reflect changes in nomenclature.

Paragraph (f)(7) is amended to reflect changes in citation form.

Paragraph (f)(9) is amended to clarify that, in the event previous fees have not been paid in a timely fashion, or where estimated fees exceed $250, no processing of subsequently received requests will occur until such time as the requester remits all past due fees, as well as the fees estimated to be due as a result of the new request; and to clarify that the IRS reserves the right to require payment of fees after a request is processed and before any records are released to a requester.

Paragraph (f)(10) is amended to reflect changes in nomenclature.

Paragraph (g) has been amended to contain the revised business information procedures which were previously detailed in paragraph (h).

Paragraph (h) is amended to contain the revised list of responsible officials and their addresses previously contained in paragraph (g).

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these rules and therefore a Regulatory Flexibility Analysis is not required. The IRS has not published a notice of proposed rulemaking on these revisions, as allowed by 5 U.S.C. 553 when the agency determines, for good cause, that it is unnecessary to publish a proposed rule and obtain comments from interested persons. The IRS has determined that publication of a proposed rule is unnecessary inasmuch as these revisions (1) generally involve revisions consistent with the Department of the Treasury's title 31 revised FOIA regulations (65 FR 40503 (June 30, 2000)); (2) involve only nomenclature and address changes; (3) merely represent the publication of existing procedures already in place as set forth in the Internal Revenue Manual; or (4) merely reflect procedures accepted or required by the courts.

Drafting Information

The principal author of these rules is Michael B. Frosch of the Office of the Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

List of Subjects in 26 CFR Part 601

Administrative practice and procedure, Freedom of Information, Reporting and recordkeeping requirements, Taxes.

Amendments to the Statement of Procedural Rules

Accordingly, 26 CFR part 601 is amended as follows:

PART 601—STATEMENT OF PROCEDURAL RULES

Paragraph 1. The authority citation for part 601 continues to read as follows:

Authority: 5 U.S.C. 301 and 552.

§ 601.701 [Removed]

Par. 2. Section 601.701 is removed.

Par. 3. Section 601.702 is revised to read as follows:

§ 601.702 Publication, public inspection, and specific requests for records.

(a) *Publication in the* **Federal Register**—(1) *Requirement.* (i) Subject to the application of the exemptions and exclusions described in the Freedom of Information Act, 5 U.S.C. 552(b) and (c), and subject to the limitations provided in paragraph (a)(2) of this section, the IRS is required under 5 U.S.C. 552(a)(1), to state separately and publish currently in the **Federal Register** for the guidance of the public the following information—

(A) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions, from the IRS;

(B) Statement of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures which are available;

(C) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the IRS; and

(E) Each amendment, revision, or repeal of matters referred to in paragraphs (a)(1)(i)(A) through (D) of this section.

(ii) Pursuant to the foregoing requirements, the Commissioner publishes in the **Federal Register** from time to time a statement, which is not codified in this chapter, on the organization and functions of the IRS, and such amendments as are needed to keep the statement on a current basis. In addition, there are published in the **Federal Register** the rules set forth in this part 601 (Statement of Procedural Rules), such as those in paragraph E of this section, relating to conference and practice requirements of the IRS; the regulations in part 301 of this chapter (Procedure and Administration Regulations); and the various substantive regulations under the Internal Revenue Code of 1986, such as the regulations in part 1 of this chapter (Income Tax Regulations), in part 20 of this chapter (Estate Tax Regulations), and in part 31 of this chapter (Employment Tax Regulations).

(2) *Limitations.* (i) *Incorporation by reference in the* **Federal Register**. Matter which is reasonably available to the class of persons affected thereby, whether in a private or public publication, shall be deemed published in the **Federal Register** for purposes of paragraph (a)(1) of this section when it is incorporated by reference therein with the approval of the Director of the Office of the Federal Register. The matter which is incorporated by reference must be set forth in the private or public publication substantially in its entirety and not merely summarized or printed as a synopsis. Matter, the location and scope of which are familiar to only a few persons having a special working knowledge of the activities of the IRS, may not be incorporated in the **Federal Register** by reference. Matter may be incorporated by reference in the **Federal Register** only pursuant to the provisions of 5 U.S.C. 552(a)(1) and 1 CFR part 20.

(ii) Effect of failure to publish. Except to the extent that a person has actual and timely notice of the terms of any matter referred to in paragraph (a)(1) of this section which is required to be published in the **Federal Register**, such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference therein pursuant to paragraph (a)(2)(i) of this section. Thus, for example, any such matter which imposes an obligation and which is not so published or incorporated by reference shall not

adversely change or affect a person's rights.

(b) *Public inspection and copying*—(1) *In general.*

(i) Subject to the application of the exemptions described in 5 U.S.C. 552(b) and the exclusions described in 5 U.S.C. 552(c), the IRS is required under 5 U.S.C. 552(a)(2) to make available for public inspection and copying or, in the alternative, to promptly publish and offer for sale the following information:

(A) Final opinions, including concurring and dissenting opinions, and orders, if such opinions and orders are made in the adjudication of cases;

(B) Those statements of policy and interpretations which have been adopted by the IRS but are not published in the **Federal Register**;

(C) Its administrative staff manuals and instructions to staff that affect a member of the public; and

(D) Copies of all records, regardless of form or format, which have been released to any person under 5 U.S.C. 552(a)(3) and which, because of the nature of their subject matter, the IRS determines have become or are likely to become the subject of subsequent requests for substantially the same records. The determination that records have become or may become the subject of subsequent requests shall be based on the following criteria:

(*1*) The subject matter is clearly of interest to the public at large or to special interest groups from which more than one request is expected to be received; or

(*2*) When more than four requests for substantially the same records have already been received.

(ii) The IRS is also required by 5 U.S.C. 552(a)(2) to maintain and make available for public inspection and copying current indexes identifying any matter described in paragraphs (b)(1)(i)(A) through (C) of this section which is issued, adopted, or promulgated after July 4, 1967, and which is required to be made available for public inspection or published. In addition, the IRS shall also promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the **Federal Register** that the publication would be unnecessary and impracticable, in which case the IRS shall nonetheless provide copies of such indexes on request at a cost not to exceed the direct cost of duplication. No matter described in paragraphs (b)(1)(i)(A) through (C) of this section which is required by this section to be made available for public inspection or published may be relied upon, used, or cited as precedent by the IRS against a party other than an agency unless such party has actual and timely notice of the terms of such matter or unless the matter has been indexed and either made available for inspection or published, as provided by this paragraph (b). This paragraph (b) applies only to matters which have precedential significance. It does not apply, for example, to any ruling or advisory interpretation issued to a taxpayer or to a particular transaction or set of facts which applies only to that transaction or set of facts. Rulings, determination letters, technical advice memorandums, and Chief Counsel advice are open to public inspection and copying pursuant to 26 U.S.C. 6110. This paragraph (b) does not apply to matters which have been made available pursuant to paragraph (a) of this section.

(iii) For records required to be made available for public inspection and copying pursuant to 5 U.S.C. 552(a)(2) and paragraphs (b)(1)(i)(A) through (D) of this section, which are created on or after November 1, 1996, the IRS shall make such records available on the Internet within one year after such records are created.

(iv) The IRS shall make the index referred to in paragraph (b)(1)(ii) of this section available on the Internet.

(2) *Deletion of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, the IRS shall, in accordance with 5 U.S.C. 552(a)(2), delete identifying details contained in any matter described in paragraphs (b)(1)(i)(A) through (D) of this section before making such matter available for inspection or publication. Such matters shall also be subject to any applicable exemption set forth in 5 U.S.C. 552(b). In every case where identifying details or other matters are so deleted, the justification for the deletion shall be explained in writing. The extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in 5 U.S.C. 552(b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(3) *Freedom of Information Reading Room*—(i) *In general.* The Headquarters Disclosure Office of the IRS shall provide a reading room where the matters described in paragraphs (b)(1)(i)(A) through (D) of this section which are required to be made available for public inspection, and the current indexes to such matters, shall be made available to the public for inspection and copying. The Freedom of Information Reading Room shall contain other matters determined to be helpful for the guidance of the public, including a complete set of rules and regulations (except those pertaining to alcohol, tobacco, firearms, and explosives) contained in this title, any Internal Revenue matters which may be incorporated by reference in the **Federal Register** (but not a copy of the **Federal Register** so doing) pursuant to paragraph (a)(2)(i) of this section, a set of Cumulative Bulletins, and copies of various IRS publications. The public shall not be allowed to remove any record from the Freedom of Information Reading Room.

(ii) *Location of Freedom of Information Reading Room.* The location of the Headquarters Disclosure Office Freedom of Information Reading Room is: IRS, 1111 Constitution Avenue, NW., Room 1621, Washington, DC.

(iii) *Copying facilities.* The Headquarters Disclosure Office shall provide facilities whereby a person may obtain copies of material located on the shelves of the Freedom of Information Reading Room.

(c) *Specific requests for other records*—(1) *In general.* (i) Subject to the application of the exemptions described in 5 U.S.C. 552(b) and the exclusions described in 5 U.S.C. 552(c), the IRS shall, in conformance with 5 U.S.C. 552(a)(3), make reasonably described records available to a person making a request for such records which conforms in every respect with the rules and procedures set forth in this section. Any request or any appeal from the initial denial of a request that does not comply with the requirements set forth in this section shall not be considered subject to the time constraints of paragraphs (c)(9), (10), and (11) of this section, unless and until the request or appeal is amended to comply. The IRS shall promptly advise the requester in what respect the request or appeal is deficient so that it may be resubmitted or amended for consideration in accordance with this section. If a requester does not resubmit a perfected request or appeal within 35 days from the date of a communication from the IRS, the request or appeal file shall be closed. When the resubmitted request or appeal conforms with the requirements of this section, the time constraints of paragraphs (c)(9), (10), and (11) of this section shall begin.

(ii) Requests for the continuing production of records created or for records created after the date of receipt of the request shall not be honored.

(iii) Specific requests under paragraph (a)(3) for material described in paragraph (a)(2)(A)through(C) and which is in the Freedom of Information Reading Room shall not be honored.

(2) *Electronic format records.* (i) The IRS shall provide the responsive record or records in the form or format requested if the record or records are readily reproducible by the IRS in that form or format. The IRS shall make reasonable efforts to maintain its records in forms or formats that are reproducible for the purpose of disclosure. For purposes of this paragraph, the term *readily reproducible* means, with respect to electronic format, a record or records that can be downloaded or transferred intact to a floppy disk, computer disk (CD), tape, or other electronic medium using equipment currently in use by the office or offices processing the request. Even though some records may initially be readily reproducible, the need to segregate exempt from nonexempt records may cause the releasable material to be not readily reproducible.

(ii) In responding to a request for records, the IRS shall make reasonable efforts to search for the records in electronic form or format, except where such efforts would significantly interfere with the operation of the agency's automated information system(s). For purposes of this paragraph (c), the term *search* means to locate, manually or by automated means, agency records for the purpose of identifying those records which are responsive to a request.

(iii) Searches for records maintained in electronic form or format may require the application of codes, queries, or other minor forms of programming to retrieve the requested records.

(3) *Requests for records not in control of the IRS.* (i) Where the request is for a record which is determined to be in the possession or under the control of a constituent unit of the Department of the Treasury other than the IRS, the request for such record shall immediately be transferred to the appropriate constituent unit and the requester notified to that effect. Such referral shall not be deemed a denial of access within the meaning of these regulations. The constituent unit of the Department to which such referral is made shall treat such request as a new request addressed to it and the time limits for response set forth in paragraphs (c)(9) and (c)(10) of this section shall commence when the referral is received by the designated office or officer of the constituent unit. Where the request is for a record which is of a type that is not maintained by any constituent unit of the Department of the Treasury, the requester shall be so advised.

(ii) Where the record requested was created by another agency or constituent unit of the Department of the Treasury and a copy thereof is in the possession of the IRS, the IRS official to whom the request is delivered shall refer the request to the agency or constituent unit which originated the record for direct reply to the requester. The requester shall be informed of such referral. This referral shall not be considered a denial of access within the meaning of these regulations. Where the record is determined to be exempt from disclosure under 5 U.S.C. 552, the referral need not be made, but the IRS shall inform the originating agency or constituent unit of its determination. Where notifying the requester of its referral may cause a harm to the originating agency or constituent unit which would enable the originating agency or constituent unit to withhold the record under 5 U.S.C. 552, then such referral need not be made. In both of these circumstances, the IRS official to whom the request is delivered shall process the request in accordance with the procedures set forth in this section.

(iii) When a request is received for a record created by the IRS (*i.e.*, in its possession and control) that includes information originated by another agency or constituent unit of the Department of the Treasury, the record shall be referred to the originating agency or constituent unit for review, coordination, and concurrence prior to being released to a requester. The IRS official to whom the request is delivered may withhold the record without prior consultation with the originating agency or constituent unit.

(4) *Form of request.* (i) Requesters are advised that only requests for records which fully comply with the requirements of this section can be processed in accordance with this section. Requesters shall be notified promptly in writing of any requirements which have not been met or any additional requirements to be met. Every effort shall be made to comply with the requests as written. The initial request for records must—

(A) Be made in writing and signed by the individual making the request;

(B) State that it is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, or regulations thereunder;

(C) Be addressed to and mailed to the office of the IRS official who is responsible for the control of the records requested (*see* paragraph (h) of this section for the responsible officials and their addresses), regardless of where such records are maintained. Generally, requests for records pertaining to the requester, or other matters of local interest, should be directed to the office servicing the requester's geographic area of residence. Requests for records maintained in the Headquarters of the IRS and its National Office of Chief Counsel, concerning matters of nationwide applicability, such as published guidance (regulations and revenue rulings), program management, operations, or policies, should be directed to the Headquarters Disclosure Office. If the person making the request does not know the official responsible for the control of the records being requested, the person making the request may contact, by telephone or in writing, the disclosure office servicing the requester's geographic area of residence to ascertain the identity of the official having control of the records being requested so that the request can be addressed, and delivered, to the appropriate responsible official. Misdirected requests that otherwise satisfy the requirements of this section shall be immediately transferred to the appropriate responsible IRS official and the requester notified to that effect. Such transfer shall not be deemed a denial of access within the meaning of these regulations. The IRS official to whom the request is redirected shall treat such request as a new request addressed to it and the time limits for response set forth in paragraphs (c)(9) and (c)(11) of this section shall commence when the transfer is received by the designated office;

(D) Reasonably describe the records in accordance with paragraph (c)(5)(i) of this section;

(E) In the case of a request for records the disclosure of which is limited by statute or regulations (as, for example, the Privacy Act of 1974 (5 U.S.C. 552a) or section 6103 and the regulations thereunder), establish the identity and the right of the person making the request to the disclosure of the records in accordance with paragraph (c)(5)(iii) of this section;

(F) Set forth the address where the person making the request desires to be notified of the determination as to whether the request shall be granted;

(G) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them;

(H) State the firm agreement of the requester to pay the fees for search, duplication, and review ultimately determined in accordance with paragraph (f) of this section, or, in accordance with paragraph (c)(4)(ii) of this section, place an upper limit for

such fees that the requester is willing to pay, or request that such fees be reduced or waived and state the justification for such request; and

(I) Identify the category of the requester and, with the exception of ''other requesters,'' state how the records shall be used, as required by paragraph (f)(3) of this section.

(ii) As provided in paragraph (c)(4)(i)(H) of this section, rather than stating a firm agreement to pay the fee ultimately determined in accordance with paragraph (f) of this section or requesting that such fees be reduced or waived, the requester may place an upper limit on the amount the requester agrees to pay. If the requester chooses to place an upper limit and the estimated fee is deemed to be greater than the upper limit, or where the requester asks for an estimate of the fee to be charged, the requester shall be promptly advised of the estimate of the fee and asked to agree to pay such amount. Where the initial request includes a request for reduction or waiver of the fee, the IRS officials responsible for the control of the requested records (or their delegates) shall determine whether to grant the request for reduction or waiver in accordance with paragraph (f) of this section and notify the requester of their decisions and, if their decisions result in the requester being liable for all or part of the fee normally due, ask the requester to agree to pay the amount so determined. The requirements of this paragraph shall not be deemed met until the requester has explicitly agreed to pay the fee applicable to the request for records, if any, or has made payment in advance of the fee estimated to be due. If the requester has any outstanding balance of search, review, or duplication fees, the requirements of this paragraph shall not be deemed met until the requester has remitted the outstanding balance due.

(5) *Reasonable description of records; identity and right of the requester.* (i) The request for records must describe the records in reasonably sufficient detail to enable the IRS employees who are familiar with the subject matter of the request to locate the records without placing an unreasonable burden upon the IRS. While no specific formula for a reasonable description of a record can be established, the requirement shall generally be satisfied if the requester gives the name, taxpayer identification number (*e.g.*, social security number or employer identification number), subject matter, location, and years at issue, of the requested records. If the request seeks records pertaining to pending litigation, the request shall indicate the title of the case, the court in which the case was filed, and the nature of the case. It is suggested that the person making the request furnish any additional information which shall more clearly identify the requested records. Where the requester does not reasonably describe the records being sought, the requester shall be afforded an opportunity to refine the request. Such opportunity may involve a conference with knowledgeable IRS personnel at the discretion of the disclosure officer. The reasonable description requirement shall not be used by officers or employees of the Internal Revenue as a device for improperly withholding records from the public.

(ii) The IRS shall make a reasonable effort to comply fully with all requests for access to records subject only to any applicable exemption set forth in 5 U.S.C. 552(b) or any exclusion described in 5 U.S.C. 552(c). In any situation in which it is determined that a request for voluminous records would unduly burden and interfere with the operations of the IRS, the person making the request shall be asked to be more specific and to narrow the request, or to agree on an orderly procedure for the production of the requested records, in order to satisfy the request without disproportionate adverse effect on IRS operations.

(iii) *Statutory or regulatory restrictions*—(A) In the case of records containing information with respect to particular persons the disclosure of which is limited by statute or regulations, persons making requests shall establish their identity and right to access to such records. Persons requesting access to such records which pertain to themselves may establish their identity by—

(*1*) The presentation of a single document bearing a photograph (such as a passport or identification badge), or the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a credit card or organization membership card), in the case of a request made in person,

(*2*) The submission of the requester's signature, address, and one other identifier (such as a photocopy of a driver's license) bearing the requester's signature, in the case of a request by mail, or

(*3*) The presentation in person or the submission by mail of a notarized statement, or a statement made under penalty of perjury in accordance with 28 U.S.C. 1746, swearing to or affirming such person's identity.

(B) Additional proof of a person's identity shall be required before the requests shall be deemed to have met the requirement of paragraph (c)(4)(i)(E) of this section if it is determined that additional proof is necessary to protect against unauthorized disclosure of information in a particular case. Persons who have identified themselves to the satisfaction of IRS officials pursuant to this paragraph (c) shall be deemed to have established their right to access records pertaining to themselves. Persons requesting records on behalf of or pertaining to another person must provide adequate proof of the legal relationship under which they assert the right to access the requested records before the requirement of paragraph (c)(4)(i)(E) of this section shall be deemed met.

(C) In the case of an attorney-in-fact, or other person requesting records on behalf of or pertaining to other persons, the requester shall furnish a properly executed power of attorney, Privacy Act consent, or tax information authorization, as appropriate. In the case of a corporation, if the requester has the authority to legally bind the corporation under applicable state law, such as its corporate president or chief executive officer, then a written statement or tax information authorization certifying as to that person's authority to make a request on behalf of the corporation shall be sufficient. If the requester is any other officer or employee of the corporation, then such requester shall furnish a written statement certifying as to that person's authority to make a request on behalf of the corporation by any principal officer and attested to by the secretary or other officer (other than the requester) that the person making the request on behalf of the corporation is properly authorized to make such a request. If the requester is other than one of the above, then such person may furnish a resolution by the corporation's board of directors or other governing body which provides that the person making the request on behalf of the corporation is properly authorized to make such a request, or shall otherwise satisfy the requirements set forth in section 6103(e). A person requesting access to records of a partnership or a subchapter S Corporation shall provide a notarized statement, or a statement made under penalty of perjury in accordance with 28 U.S.C. 1746, that the requester was a member of the partnership or subchapter S corporation for a part of each of the years included in the request.

(6) *Requests for expedited processing.* (i) When a requester demonstrates compelling need, a request shall be taken out of order and given expedited

treatment. A compelling need involves—

(A) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(B) An urgency to inform the public concerning actual or alleged Federal government activity, if made by a person primarily engaged in disseminating information. A person primarily engaged in disseminating information, if not a full-time representative of the news media, as defined in paragraph (f)(3)(ii)(B) of this section, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A person primarily engaged in disseminating information does not include individuals who are engaged only incidentally in the dissemination of information. The standard of urgency to inform requires that the records requested pertain to a matter of current exigency to the American public, beyond the public's right to know about government activity generally, and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the American general public;

(C) The loss of substantial due process rights.

(ii) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of his or her knowledge and belief, explaining in detail why there is a compelling need for expedited processing.

(iii) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, requests for expedited processing must be submitted to the responsible official of the IRS who maintains the records requested except that a request for expedited processing under paragraph (c)(6)(i)(B) of this section shall be submitted directly to the Director, Communications Division, whose address is Office of Media Relations, CL:C:M, Internal Revenue Service, Room 7032, 1111 Constitution Avenue, NW., Washington, DC 20224.

(iv) Upon receipt by the responsible official in the IRS, a request for expedited processing shall be considered and a determination as to whether to grant or deny the request shall be made, and the requester notified, within ten days of the date of the request, provided that in no event shall the IRS have less than five days (excluding Saturdays, Sundays, and legal public holidays) from the date of the responsible official's receipt of the request for such processing. The determination to grant or deny a request for expedited processing shall be made solely on the information initially provided by the requester.

(v) An appeal of an initial determination to deny expedited processing must be made within ten days of the date of the initial determination to deny expedited processing, and must otherwise comply with the requirements of paragraph (c)(10) of this section. Both the envelope and the appeal itself shall be clearly marked, ''Appeal for Expedited Processing.''

(vi) IRS action to deny or affirm denial of a request for expedited processing pursuant to this paragraph, and IRS failure to respond in a timely manner to such a request shall be subject to judicial review, except that judicial review shall be based on the record before the IRS at the time of the determination. A district court of the United States shall not have jurisdiction to review the IRS's denial of expedited processing of a request for records after the IRS has provided a complete response to the request.

(7) *Date of receipt of request.* (i) Requests for records and any separate agreement to pay, final notification of waiver of fees, or letter transmitting payment, shall be promptly stamped with the date of delivery to or dispatch by the office of the IRS official responsible for the control of the records requested. A request for records shall be considered to have been received on the date on which a complete request containing the information required by paragraphs (c)(4)(i)(A) through (I) has been received by the IRS official responsible for the control of the records requested. A determination that a request is deficient in any respect is not a denial of access, and such determinations are not subject to administrative appeal.

(ii) The latest of such stamped dates shall be deemed for purposes of this section to be the date of receipt of the request, provided that the requirements of paragraphs (c)(4)(i)(A) through (I) of this section have been satisfied, and, where applicable—

(A) The requester has agreed in writing, by executing a separate contract or otherwise, to pay the fees for search, duplication, and review determined due in accordance with paragraph (f) of this section, or

(B) The fees have been waived in accordance with paragraph (f) of this section, or

(C) Payment in advance has been received from the requester.

(8) *Search for records requested.* (i) Upon the receipt of a request, search services shall be performed by IRS personnel to identify and locate the requested records. Search time includes any and all time spent looking for material responsive to the request, including page-by-page or line-by-line identification of material within records. Where duplication of an entire record would be less costly than a line-by-line identification, duplication should be substituted for this kind of search. With respect to records maintained in computerized form, a search shall include services functionally analogous to a search for records which are maintained on paper.

(ii) In determining which records are responsive to a request, the IRS official responsible for the control of the records requested shall include only those records within the official's possession and control as of the date of the receipt of the request by the appropriate disclosure officer.

(9) *Initial determination.* (i) *Responsible official.*

(A) The Associate Director, Personnel Security or delegate shall have the sole authority to make initial determinations with respect to requests for records under that office's control.

(B) The Director of the Office of Governmental Liaison and Disclosure or delegate shall have the sole authority to make initial determinations with respect to all other requests for records of the IRS maintained in the Headquarters and its National Office of the Chief Counsel. For all other records within the control of the IRS, the initial determination with respect to requests for records may be made either by the Director, Office of Governmental Liaison and Disclosure, or by the IRS officials responsible for the control of the records requested, or their delegates (see paragraph (h) of this section).

(ii) *Processing of request.* The appropriate responsible official or delegate shall respond in the approximate order of receipt of the requests, to the extent consistent with sound administrative practice. In any event, the initial determination shall be made and notification thereof mailed within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (c)(7) of this section, unless the responsible official invokes an extension pursuant to paragraph (c)(11) of this section, the requester otherwise agrees to an extension of the 20 day time

limitation, or the request is an expedited request.

(iii) *Granting of request.* If the request is granted in full or in part, and if the requester wants a copy of the records, a statement of the applicable fees, if there are any, shall be mailed to the requester either at the time of the determination or shortly thereafter. In the case of a request for inspection, the records shall be made available promptly for inspection, at the time and place stated, normally at the appropriate office where the records requested are controlled. If the person making the request has expressed a desire to inspect the records at another office of the IRS, a reasonable effort shall be made to comply with the request. Records shall be made available for inspection at such reasonable and proper times so as not to interfere with their use by the IRS or to exclude other persons from making inspections. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The person making the request shall not be allowed to remove the records from the office where inspection is made. If, after making inspection, the person making the request desires copies of all or a portion of the requested records, copies shall be furnished upon payment of the established fees prescribed by paragraph (f) of this section.

(iv) *Denial of request.* If it is determined that some records shall be denied, the person making the request shall be so notified by mail. The letter of notification shall specify the city or other location where the requested records are situated, contain a brief statement of the grounds for not granting the request in full including the exemption(s) relied upon, the name and any title or position of the official responsible for the denial, and advise the person making the request of the right to appeal to the Commissioner in accordance with paragraph (c)(10) of this section.

(A) In denying a request for records, in whole or in part, the IRS shall include the date that the request was received in the appropriate disclosure office, and shall provide an estimate of the volume of the denied matter to the person making the request, unless providing such estimate would harm an interest protected by an exemption in 5 U.S.C. 552(b) or (c) pursuant to which the denial is made; and

(B) The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by an exemption in 5 U.S.C. 552(b) under which the deletion is made. If technically feasible, the amount of the information deleted and the asserted exemption shall be indicated at the place in the record where such deletion is made.

(v) *Inability to locate and evaluate within time limits.* Where the records requested cannot be located and evaluated within the initial twenty day period or any extension thereof in accordance with paragraph (c)(11) of this section, the search for the records or evaluation shall continue, but the requester shall be notified, and advised that the requester may consider such notification a denial of the request for records. The requester shall be provided with a statement of judicial rights along with the notification letter. The requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate and evaluate the records. Such voluntary extension of time shall not constitute a waiver of the requester's right to appeal or seek judicial review of any denial of access ultimately made or the requester's right to seek judicial review in the event of failure to comply with the time extension granted.

(10) *Administrative appeal.* (i) The requester may submit an administrative appeal to the Commissioner of Internal Revenue by letter that is postmarked within 35 days after the later of the date of any letter of notification described in paragraph (c)(9)(iv) of this section, the date of any letter of notification of an adverse determination of the requester's category described in paragraph (f)(3) of this section, the date of any letter of notification of an adverse determination of the requester's fee waiver or reduction request described in paragraph (f)(2) of this section, the date of any letter determining that no responsive records exist, or the date of the last transmission of the last records released. An administrative appeal for denial of a request for expedited processing must be made to the Commissioner of Internal Revenue by letter that is postmarked within 10 days after the date of any letter of notification discussed in paragraph (c)(6)(iv) of this section.

(ii) The letter of appeal shall—(A) Be made in writing and signed by the requester;

(B) Be addressed to the Commissioner and mailed to IRS Appeals, 6377A Riverside Avenue, Suite 110, Riverside, California 92506–FOIA Appeal;

(C) Reasonably describe the records requested to which the appeal pertains in accordance with paragraph (c)(5)(i) of this section;

(D) Set forth the address where the appellant desires to be notified of the determination on appeal;

(E) Specify the date of the request, the office to which the request was submitted, and where possible, enclose a copy of the initial request and the initial determination being appealed; and

(F) Ask the Commissioner to grant the request for records, fee waiver, expedited processing, or favorable fee category, as applicable, or verify that an appropriate search was conducted and the responsive records were either produced or an appropriate exemption asserted. The person submitting the appeal may submit any argument in support of the appeal in the letter of appeal.

(iii) Appeals shall be stamped promptly with the date of their receipt in the Office of Appeals, and the later of this stamped date or the stamped date of a document submitted subsequently which supplements the original appeal so that the appeal satisfies the requirements set forth in paragraphs (c)(10)(ii)(A) through (F) of this section shall be deemed by the IRS to be the date of receipt of the appeal for all purposes of this section. The Commissioner or a delegate shall acknowledge receipt of the appeal and advise the requester of the date of receipt and the date a response is due in accordance with this paragraph. If an appeal fails to satisfy any of the requirements of paragraph (c)(10)(ii)(A) through (F) of this section, the person making the request shall be advised promptly in writing of the additional requirements to be met. Except for appeals of denials of expedited processing, the determination to affirm the initial denial (in whole or in part) or to grant the request for records shall be made and notification of the determination shall be mailed within twenty days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal unless extended pursuant to paragraph (c)(11)(i) of this section. Appeals of initial determinations to deny expedited processing must be made within 10 calendar days of the determination to deny the expedited processing. If it is determined that the appeal from the initial denial is to be denied (in whole or in part), the requester shall be notified in writing of the denial, the reasons therefor, the name and title or position of the official responsible for the denial on appeal, and the provisions of 5 U.S.C. 552(a)(4) for judicial review of that determination.

(11) *Time extensions.* (i) *Unusual circumstances.* (A) In unusual

circumstances, the time limitations specified in paragraphs (c)(9) and (10) of this section may be extended by written notice from the official charged with the duty of making the determinations to the person making the request or appeal setting forth the reasons for this extension and the date on which the determination is expected to be sent. As used in this paragraph, the term *unusual circumstances* means, but only to the extent reasonably necessary to the proper processing of the particular request:

(*1*) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(*2*) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;

(*3*) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more constituent units of the Department of the Treasury having substantial subject matter interest therein; and

(*4*) The need for consultation with business submitters to determine the nature and extent of proprietary information in accordance with this section.

(B) Any extension or extensions of time for unusual circumstances shall not cumulatively total more than ten days (exclusive of Saturday, Sunday and legal public holidays). If additional time is needed to process the request, the IRS shall notify the requester and provide the requester an opportunity to limit the scope of the request or arrange for an alternative time frame for processing the request or a modified request. The requester shall retain the right to define the desired scope of the request, as long as it meets the requirements contained in this section.

(ii) *Aggregation of requests.* If more than one request is received from the same requester, or from a group of requesters acting in concert, and the IRS believes that such requests constitute a single request which would otherwise satisfy the unusual circumstances specified in subparagraph (c)(11)(i) of this section, and the requests involve clearly related matters, the IRS may aggregate these requests for processing purposes. Multiple requests involving unrelated matters shall not be aggregated.

(12) *Failure to comply.* If the IRS fails to comply with the time limitations specified in paragraphs (c)(9), (10), or paragraph (c)(11)(i) of this section, any person making a request for records satisfying the requirements of paragraphs (c)(4)(i)(A) through (I) of this section, shall be deemed to have exhausted administrative remedies with respect to such request. Accordingly, this person may initiate suit in accordance with paragraph (c)(13) of this section.

(13) *Judicial review.* If an administrative appeal pursuant to paragraph (c)(10) of this section for records or fee waiver or reduction is denied, or if a request for expedited processing is denied and there has been no determination as to the release of records, or if a request for a favorable fee category under paragraph (f)(3) of this section is denied, or a determination is made that there are no responsive records, or if no determination is made within the twenty day periods specified in paragraphs (c)(9) and (10) of this section, or the period of any extension pursuant to paragraph (c)(11)(i) of this section, or by grant of the requester, respectively, the person making the request may commence an action in a United States district court in the district in which the requester resides, in which the requester's principal place of business is located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4)(B). The statute authorizes an action only against the agency. With respect to records of the IRS, the agency is the IRS, not an officer or an employee thereof. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Delivery of process upon the IRS shall be directed to the Commissioner of Internal Revenue, Attention: CC:PA, 1111 Constitution Avenue, NW., Washington, DC 20224. The IRS shall serve an answer or otherwise plead to any complaint made under this paragraph within 30 days after service upon it, unless the court otherwise directs for good cause shown. The district court shall determine the matter *de novo,* and may examine the contents of the IRS records in question *in camera* to determine whether such records or any part thereof shall be withheld under any of the exemptions described in 5 U.S.C. 552(b) and the exclusions described in 5 U.S.C. 552(c). The burden shall be upon the IRS to sustain its action in not making the requested records available. The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the person making the request in any case in which the complainant has substantially prevailed.

(14) *Preservation of records.* All correspondence relating to the requests received by the IRS under this chapter, and all records processed pursuant to such requests, shall be preserved, until such time as the destruction of such correspondence and records is authorized pursuant to title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under 5 U.S.C. 552.

(d) *Rules for disclosure of certain specified matters.* Requests for certain specified categories of records shall be processed by the IRS in accordance with other established procedures.

(1) *Inspection of tax returns and attachments or transcripts.* The inspection of returns and attachments is governed by the provisions of the internal revenue laws and regulations thereunder promulgated by the Secretary of the Treasury. See section 6103 and the regulations thereunder. Written requests for a copy of a tax return and attachments or a transcript of a tax return shall be made using IRS form 4506, ''Request for Copy or Transcript of Tax Form.'' A reasonable fee, as the Commissioner may from time to time establish, may be charged for such copies.

(2) *Record of seizure and sale of real estate.* Subject to the rules on disclosure set forth in section 6103, record 21, part 2, ''Record of seizure and sale of real estate'', is available for public inspection in the local IRS office where the real estate is located. Copies of Record 21, part 2 shall be furnished upon written request. Members of the public may call the toll-free IRS Customer Service number, 1–800–829–1040, to obtain the address of the appropriate local office. Record 21 does not list real estate seized for use in violation of the internal revenue laws (see section 7302).

(3) *Public inspection of certain information returns, notices, and reports furnished by certain tax-exempt organizations and certain trusts.* Subject to the rules on disclosure set forth in section 6104: Information furnished on any form 990 series or form 1041–A returns, pursuant to sections 6033 and 6034, shall be made available for public inspection and copying, upon written request; information furnished by organizations exempt from tax under section 527 on forms 8871, Political Organization Notice of Section 527 Status, and forms 8872, Political Organization Report of Contributions and Expenditures, are available for

public inspection and copying from the IRS Web site at www.eforms.irs.gov. In addition, forms 8871 and 8872 shall be made available for public inspection and copying, upon written request; and information furnished by organizations exempt from tax under section 527 on form 1120–POL pursuant to section 6012(a)(6) shall be made available for public inspection and copying upon written request. Written requests to inspect or obtain copies of any of the information described in this paragraph (d)(3) shall be made using form 4506–A, ''Request for Public Inspection or Copy of Exempt or Political Organization IRS Form,'' and be directed to the appropriate address listed on form 4506–A.

(4) *Public inspection of applications and determinations of certain organizations for tax exemption.* Subject to the rules on disclosure set forth in section 6104, applications, including forms 1023 and 1024, and certain papers submitted in support of such applications, filed by organizations described in section 501(c) or (d) and determined to be exempt from taxation under section 501(a), and any letter or other document issued by the IRS with respect to such applications, shall be made available for public inspection and copying, upon written request. Written requests to inspect or obtain copies of this information shall be made using form 4506–A, ''Request for Public Inspection or Copy of Exempt or Political Organization IRS Form'' and be directed to the appropriate address listed on form 4506–A.

(5) *Public inspection of applications and annual returns with respect to certain deferred compensation plans and accounts and employee plans.* Subject to the rules on disclosure set forth in section 6104; forms, applications, and papers submitted in support of such applications, with respect to the qualification of a pension, profit sharing, or stock bonus plan under sections 401(a), 403(a), or 405(a), an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b), or with respect to the exemption from tax of an organization forming part of such a plan or account, and any document issued by the IRS dealing with such qualification or exemption, shall be open to public inspection and copying upon written request. This paragraph shall not apply with respect to plans with no more than 25 plan participants. Written requests to inspect or obtain copies of such material shall be directed to IRS Customer Service—Tax Exempt & Government Entities Division (TEGE), PO Box 2508, Room 2023, Cincinnati, Ohio 45201; and information furnished on the Form 5500 series of returns, pursuant to section 6058, shall be made available for public inspection and copying upon written request. Except for requests for form 5500–EZ, written requests to inspect or to obtain a copy of this information shall be directed to the Department of Labor, Public Disclosure, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210. Written requests to inspect or to obtain a copy of form 5500–EZ shall be directed to the Internal Revenue Service Center, PO Box 9941, Stop 6716, Ogden, Utah 84409.

(6) *Publication of statistics of income.* Statistics with respect to the operation of the income tax laws are published annually in accordance with section 6108 and § 301.6108–1.

(7) *Comments received in response to a notice of proposed rulemaking, a solicitation for public comments, or prepublication comments.* Written comments received in response to a notice of proposed rulemaking, a solicitation for public comments, or prepublication comments, may be inspected, upon written request, by any person upon compliance with the provisions of this paragraph. Comments may be inspected in the Freedom of Information Reading Room, IRS, 1111 Constitution Avenue, NW., Room 1621, Washington, DC. The request to inspect comments must be in writing and signed by the person making the request and shall be addressed to the Commissioner of Internal Revenue, Attn: CC:ITA:RU, PO Box 7604, Ben Franklin Station, Washington, DC 20044. The person submitting the written request may inspect the comments that are the subject of the request during regular business hours. If the requester wishes to inspect the documents, the requester shall be contacted by IRS Freedom of Information Reading Room personnel when the documents are available for inspection. Copies of comments may be made in the Freedom of Information Reading Room by the person making the request or may be requested, in writing, to the Commissioner of Internal Revenue, Attn: CC:ITA:RU, PO Box 7604, Ben Franklin Station, Washington, DC 20044. The IRS shall comply with requests for records under the paragraph within a reasonable time. The provisions of paragraph (f)(5)(iii) of this section, relating to fees for duplication, shall apply with respect to requests made in accordance with this paragraph.

(8) *Accepted offers in compromise.* For one year after the date of execution, a copy of the form 7249, ''Offer Acceptance Report,'' for each accepted offer in compromise with respect to any liability for a tax imposed by title 26 shall be made available for inspection and copying in the location designated by the Compliance Area Director or Compliance Services Field Director within the Small Business and Self-Employed Division (SBSE) of the taxpayer's geographic area of residence.

(9) *Public inspection of written determinations.* Certain rulings, determination letters, technical advice memorandums, and Chief Counsel advice are open to public inspection pursuant to section 6110.

(e) *Other disclosure procedures.* For procedures to be followed by officers and employees of the IRS upon receipt of a request or demand for certain internal revenue records or information the disclosure procedure for which is not covered by this section, *see* § 301.9000–1.

(f) *Fees for services*—(1) *In general.* Except as otherwise provided, the fees to be charged for search, duplication, and review services performed by the IRS, with respect to the processing of Freedom of Information Act requests, shall be determined and collected in accordance with the provisions of this subsection. A fee shall not be charged for monitoring a requester's inspection of records which contains exempt matter. The IRS may recover the applicable fees even if there is ultimately no disclosure of records. Should services other than the services described in this paragraph be requested and rendered, which are not required by the Freedom of Information Act, fees shall be charged to recover the actual direct cost to the IRS.

(2) *Waiver or reduction of fees.* (i) The fees authorized by this paragraph may be waived or reduced on a case-by-case basis in accordance with this subsection by any IRS official who is authorized to make the initial determination pursuant to paragraph (c)(9) of this section. Fees shall be waived or reduced by such official when it is determined that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the IRS and is not primarily in the commercial interest of the requester. Such officials shall consider several factors, including, but not limited to, paragraphs (f)(2)(i) through (vi), in determining requests for waiver or reduction of fees-(A) Whether the subject of the releasable records concerns the agency's operations or activities;

(B) Whether the releasable records are likely to contribute to an understanding of the agency's operations or activities;

(C) Whether the releasable records are likely to contribute to the general public's understanding of the agency's operations or activities (*e.g.*, how will the requester convey the information to the general public);

(D) The significance of the contribution to the general public's understanding of the agency's operations or activities (*e.g.*, is the information contained in the releasable records already available to the general public);

(E) The existence and magnitude of the requester's commercial interest, as that term is used in paragraph (f)(3)(i)(A) of this section, being furthered by the releasable records; and

(F) Whether the magnitude of the requester's commercial interest is sufficiently large in comparison to the general public's interest.

(ii) Requesters asking for reduction or waiver of fees must state the reasons why they believe disclosure meets the standards set forth in paragraph (f)(2)(ii) of this section in a written request signed by the requester.

(iii) The indigence of the requester shall not be considered as a factor to determine if the requester is entitled to a reduction or waiver of fees.

(iv) Normally, no charge shall be made for providing records to federal, state, local, or foreign governments, or agencies or offices thereof, or international governmental organizations.

(v) The initial request for waiver or reduction of fees shall be addressed to the official of the IRS to whose office the request for disclosure is delivered pursuant to paragraph (c)(4)(i)(C) of this section. Appeals from denials of requests for waiver or reduction of fees shall be decided by the Commissioner's delegate in accordance with the criteria set forth in paragraph (f)(2)(ii) of this section. Appeals shall be received by the Commissioner's delegate within 35 days of the date of the letter of notification denying the initial request for waiver or reduction and shall be decided promptly. *See* paragraph (c)(10)(ii)(B) of this section for the appropriate address. Upon receipt of the determination on appeal to deny a request for waiver of fees, the requester may initiate an action in a United States district court to review the request for waiver of fees. In such action, the court shall consider the matter de novo, except that the court's review of the matter shall be limited to the record before the IRS official to whose office the request for waiver is delivered. In such action, the court shall consider the matter under the arbitrary and capricious standard.

(3) *Categories of requesters*—(i) *Attestation.* A request for records under this section shall include an attestation as to the status of the requester for use by the IRS official to whose office the request is delivered in determining the appropriate fees to be assessed. No attestation is required for a requester who falls within paragraph (f)(3)(ii)(E)(an ''other requester'').

(ii) *Categories.* (A) *Commercial use requester.* Any person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(B) *News media requester.* Any person actively gathering news for an entity that is organized and operated to publish or broadcast news (*i.e.*, information about current events or of current interest to the public) to the public. News media entities include, but are not limited to, television or radio stations broadcasting to the public at large, publishers of periodicals, to the extent they disseminate news, who make their periodicals available for purchase or subscription by the general public, computerized news services and telecommunications. Free lance journalists shall be included as media requesters if they can demonstrate a solid basis for expecting publication through a qualifying news entity (*e.g.*, publication contract, past publication record). Specialized periodicals, although catering to a narrower audience, may be considered media requesters so long as they are available to the public generally, via newsstand or subscription.

(C) *Educational institution requester.* Any person who, on behalf of a preschool, public or private elementary or secondary school, institution of undergraduate or graduate higher education, institution of professional or vocational education, which operates a program or programs of scholarly research, seeks records in furtherance of the institution's scholarly research and is not for a commercial use. This category does not include requesters wanting records for use in meeting individual academic research or study requirements.

(D) *Noncommercial scientific institution requester.* Any person on behalf of an institution that is not operated on a commercial basis, that is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(E) *Other requester.* Any requester who does not fall within the categories described in paragraphs (f)(3)(ii)(A) through (D).

(iii) *Determination of proper category.* Where the IRS has reasonable cause to doubt the use to which a requester shall put the records sought, or where that use is not clear from the record itself, the IRS shall seek additional clarification from the requester before assigning the request to a specific category. In any event, a determination of the proper category of requester shall be based upon a review of the requester's submission and may also be based upon the IRS' own records.

(iv) *Allowable charges.* (A) *Commercial use requesters.* Records shall be provided to commercial use requesters for the cost of search, duplication, and review (including doing all that is necessary to excise and otherwise prepare records for release) of records. Commercial use requesters are not entitled to two hours of free search time or 100 pages of free duplication.

(B) *News media, educational institution, and noncommercial scientific institution requesters.* Records shall be provided to news media, educational institution, and noncommercial scientific institution requesters for the cost of duplication alone, excluding fees for the first 100 pages.

(C) *Other requesters.* Requesters who do not fit into any of the above categories shall be charged fees that shall cover the full actual direct cost of searching for and duplicating records, except that the first two hours of search time and first 100 pages of duplication shall be furnished without charge. Requests from individuals for records about themselves maintained in the IRS's systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974, which permits fees only for duplication after the first 100 pages are furnished free of charge.

(4) *Avoidance of unexpected fees.* (i) In order to protect requesters from unexpected fees, all requests for records shall state the agreement of the requesters to pay the fees determined in accordance with paragraph (f)(5) of this section or state the upper limit they are willing to pay to cover the costs of processing their requests.

(ii) When the fees for processing requests are estimated by the IRS to exceed the upper limit agreed to by a requester, or when a requester has failed to state a limit and the costs are estimated to exceed $250, and the IRS has not then determined to waive or reduce the fees, a notice shall be sent to the requester. This notice shall—

(A) Inform the requester of the estimated costs;

(B) Extend an offer to the requester to confer with agency personnel in an attempt to reformulate the request in a manner which shall reduce the fees and still meet the needs of the requester;

(C) If the requester is not amenable to reformulation, which would reduce fees to under $250, then advance payment of the estimated fees shall be required; and

(D) Inform the requester that the time period, within which the IRS is obliged to make a determination on the request, shall not begin to run, pending a reformulation of the request or the receipt of advance payment from the requester, as appropriate.

(5) *Fees for services.* The fees for services performed by the IRS shall be imposed and collected as set forth in this paragraph. No fees shall be charged if the costs of routine collecting and processing the fees allowable under 5 U.S.C. 552(a)(4)(A) are likely to equal or exceed the amount of the fee.

(i) *Search services.* Fees charged for search services are as follows:

(A) *Searches for records other than computerized records.* The IRS shall charge for search services at the salary rate(s) (*i.e.*, basic pay plus 16 percent) of the employee(s) making the search. An average rate for the range of grades typically involved may be established. Fees may be charged for search time as prescribed in this section even if the time spent searching does not yield any records, or if records are denied.

(B) *Searches for computerized records.* Actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output shall be actual direct costs. For requesters in the ''other requester'' category, the charge for the computer search shall begin when the cost of the search (including the operator time and the cost of operating the computer) equals the equivalent dollar amount of two hours of the salary of the person performing the search.

(C) *Searches requiring travel or transportation.* Shipping charges to transport records from one location to another, or for the transportation of an employee to the site of requested records when it is necessary to locate rather than examine the records, shall be at the rate of the actual cost of such shipping or transportation.

(ii) *Review Services*—(A) *Review defined.* Review is the process of examining records in response to a commercial use requester, as that term is defined in paragraph (f)(3)(i)(A), upon initial consideration of the applicability of an exemption described in 5 U.S.C. 552(b) or an exclusion described in 5 U.S.C. 552(c) to the requested records, be it at the initial request or administrative appeal level, to determine whether any portion of any record responsive to the request is permitted to be withheld. Review includes doing all that is necessary to excise and otherwise prepare the records for release. Review does not include the time spent on resolving general legal or policy issues regarding the applicability of exemptions to the requested records.

(B) *Fees charged for review services.* The IRS shall charge commercial use requesters for review of records at the initial determination stage at the salary rate(s) (*i.e.*, basic pay plus 16 percent) of the employee(s) making the review. An average rate for the range of grades typically involved may be established by the Commissioner.

(iii) *Duplication other than for tax returns and attachments.* (A) Duplication fees charged for copies of paper records shall be a reasonable fee, as the Commissioner may from time to time establish.

(B) The actual direct cost of duplication for photographs, films, videotapes, audiotapes, compact disks, and other materials shall be charged.

(C) Records may be provided to a private contractor for copying and the requester shall be charged for the actual cost of duplication charged by the private contractor.

(D) When other duplication processes not specifically identified above are requested and provided pursuant to the Freedom of Information Act, their actual direct cost to the IRS shall be charged.

(E) Where the condition of the record does not enable the IRS to make legible copies, the IRS shall not attempt to reconstruct it. The official having jurisdiction over the record shall furnish the best copy that is available and advise the requester of this fact.

(iv) *Charges for copies of tax returns and attachments, and transcripts of tax returns.* A charge shall be made for each copy of a tax return and its attachments, and transcripts of tax returns, supplied in response to a form 4506, ''Request for Copy of Tax Form.'' The amount of the charge shall be a reasonable fee as computed by the Commissioner from time to time, and as set forth on form 4506.

(v) *Other services.* Other services and materials requested (*e.g.*, certification, express mailing) which are not specifically covered by this part and/or not required by the Freedom of Information Act are provided at the discretion of the IRS and are chargeable at the actual direct cost to the IRS.

(6) *Printed material.* Certain relevant government publications which shall be placed on the shelves of the Freedom of Information Reading Room shall not be sold at that location. Copies of pages of these publications may be duplicated on the premises and a fee for such service may be charged in accordance with paragraph (f)(5)(iii) of this section. A person desiring to purchase the complete publication, for example, an Internal Revenue Bulletin, should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(7) *Search, duplication, and deletion services with respect to records open to public inspection pursuant to section 6110.* Fees charged for searching for, making deletions in, and copies of records subject to public inspection pursuant to section 6110 only upon written request shall be at the actual cost, as the Commissioner may from time to time establish.

(8) *Form of payment.* Payment shall be made by check or money order, payable to the order of the Treasury of the United States.

(9) *Advance payments.* (i) If previous fees have not been paid in a timely fashion, as defined in paragraph (f)(10) of this section, or where the estimated fees exceed $250, the IRS shall require payment in full of any outstanding fees and all estimated fees prior to processing a request. Additionally, the IRS reserves the right to require payment of fees after a request is processed and before any records are released to a requester. For purposes of this paragraph, a requester is the individual in whose name a request is made; however, where a request is made on behalf of another individual, and previous fees have not been paid within the designated time period by either the requester or the individual on whose behalf the request is made, then the IRS shall require payment in full of all outstanding fees and all estimated fees before processing the request.

(ii) When the IRS acts pursuant to paragraph (f)(9)(i) of this section, the administrative time limits prescribed in paragraphs (c)(9) and (10) of this section, plus permissible extensions of these time limits as prescribed in paragraph (c)(11)(i) of this section, shall begin only after the IRS official to whom the request is delivered has received the fees described above in paragraph (f)(9)(i) of this section.

(10) *Interest.* Interest shall be charged to requesters who fail to pay the fees in a timely fashion; that is, within 30 days following the day on which the statement of fees as set forth in paragraph (c)(9)(i) of this section was

sent by the IRS official to whom the request was delivered. Whenever interest is charged, the IRS shall begin assessing interest on the 31st day following the date the statement of fees was mailed to the requester. Interest shall be at the rate prescribed in 31 U.S.C. 3717. In addition, the IRS shall take all steps authorized by the Debt Collection Act of 1982, including administrative offset, disclosure to consumer reporting agencies, and use of collection agencies, as otherwise authorized by law to effect payment.

(11) *Aggregating requests*. When the IRS official to whom a request is delivered reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, the IRS shall aggregate such requests and charge accordingly, upon notification to the requester and/or requesters.

(g) *Business information and contractor proposal procedures*— (1) *In general*. Business information provided to the IRS by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(2) *Definition*. Business information is any trade secret or other confidential financial or commercial (including research) information.

(3) *Notice to business submitters*. Except where it is determined that the information is covered by paragraph (g)(9), the official having control over the requested records, which includes business information, shall provide a business submitter with prompt written notice of a request encompassing its business information whenever required in accordance with paragraph (g)(4) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(4) *When notice is required*. (i) For business information submitted to the IRS prior to October 13, 1987, the official having control over the requested records shall provide a business submitter with notice of a request whenever—

(A) The business information was submitted to the IRS upon a commitment of confidentiality; or

(B) The business information was voluntarily submitted and it is of a kind that would customarily not be released to the public by the person from whom it was obtained; or

(C) The official has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(ii) For business information submitted to the IRS on or after October 13, 1987, the IRS shall provide a business submitter with notice of a request whenever—

(A) The business submitter has designated the information as commercially or financially sensitive information; or

(B) The official has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(iii) The business submitter's designation that the information is commercially or financially sensitive information should be supported by a statement or certification by an officer or authorized representative of the business providing specific justification that the information in question is, in fact, confidential commercial or financial information and has not been disclosed to the public.

(iv) Notice of a request for business information falling within paragraph (g)(4)(ii)(A) of this section shall be required for a period of not more than ten years after the date of submission unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(5) *Opportunity to object to disclosure*. Through the notice described in paragraph (g)(3) of this section, the official having control over the requested records shall afford a business submitter ten days (excepting Saturdays, Sundays and legal public holidays) within which to provide the official with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information, with particular attention to why the information is claimed to be trade secret or commercial or financial information that is privileged and confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under 5 U.S.C. 552.

(6) *Notice of intent to disclose*. The IRS shall consider a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the official having control over the requested records decides to disclose business information over the objection of a business submitter, the official shall forward to the business submitter a written notice which shall include—

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date, which is ten days (excepting Saturdays, Sundays and legal public holidays) after the notice of the final decision to release the requested records has been mailed to the submitter. Except as otherwise prohibited by law, a copy of the disclosure notice shall be forwarded to the requester at the same time.

(7) *Judicial review*. (i) *In general*. The IRS' disposition of the request and the submitter's objections shall be subject to judicial review under paragraph (c)(14) of this section. A requester is not required to exhaust administrative remedies if a complaint has been filed under this paragraph by a business submitter of the information contained in the requested records. Likewise, a business submitter is not required to exhaust administrative remedies if a complaint has been filed by the requester of these records.

(ii) *Notice of FOIA lawsuit*. Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (g)(4) of this section, the official having control over the requested records shall promptly provide the business submitter with written notice thereof.

(iii) *Exception to notice requirement*. The notice requirements of this paragraph shall not apply if—

(A) The official having control over the records determines that the business information shall not be disclosed;

(B) The information lawfully has been published or otherwise made available to the public; or

(C) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(8) *Appeals*. Procedures for administrative appeals from denials of requests for business information are to be processed in accordance with paragraph (c)(10) of this section.

(9) *Contractor Proposals*. (i) Pursuant to 41 U.S.C. 253b(m), the IRS shall not release under the Freedom of Information Act any proposal submitted by a contractor in response to the requirements of a solicitation for a competitive proposal, unless that proposal is set forth or incorporated by reference in a contract entered into between the IRS and the contractor that submitted the proposal. For purposes of this paragraph, the term *proposal* means any proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.

(ii) A copy of the FOIA request for information protected from disclosure under this paragraph shall be furnished to the contractor who submitted the proposal.

(h) *Responsible officials and their addresses*. For purposes of this section, the IRS officials in the disclosure offices listed below are responsible for the control of records within their geographic area. In the case of records of the Headquarters Office (including records of the National Office of the Office of Chief Counsel), except as provided in paragraph (c)(9)(i)(A), the Director, Office of Governmental Liaison and Disclosure, or delegate, is the responsible official. Requests for these records should be sent to: IRS FOIA Request, Headquarters Disclosure Office, CL:GLD:D, 1111 Constitution Avenue, NW., Washington, DC 20224.

(1) For Personnel Background Investigation Records, the address of the responsible official is: Internal Revenue Service, Attn: Associate Director, Personnel Security, Room 4244, A:PS:PSO, 1111 Constitution Avenue, NW. Washington, DC 20224.

(2) For records of the Office of Chief Counsel other than those located in the Headquarters or Division Counsel immediate offices, records shall be deemed to be under the jurisdiction of the local area Disclosure Office. Requesters seeking records under this section should send their requests to the local area Disclosure Office address listed for the state where the requester resides or any activity associated with the records occurred (for states with multiple offices, the request should be sent to the nearest office):

Alabama

IRS FOIA Request
New Orleans Disclosure Office
Mail Stop 40
600 S. Maestri Place
New Orleans, LA 70130

Alaska

IRS FOIA Request
Oakland Disclosure Office
1301 Clay Street, Suite 840–S
Oakland, CA 94612–5210

Arkansas

IRS FOIA Request
Nashville Disclosure Office
MDP 44
801 Broadway, Room 480
Nashville, TN 37203

Arizona

IRS FOIA Request
Phoenix Disclosure Office
Mail Stop 7000 PHX
210 E. Earll Drive
Phoenix, AZ 85012

California

IRS FOIA Request
Laguna Niguel Disclosure Office
24000 Avila Road, M/S 2201
Laguna Niguel, CA 92677–0207

IRS FOIA Request
Los Angeles Disclosure Office
Mail Stop 1020
300 N. Los Angeles Street
Los Angeles, CA 90012–3363

IRS FOIA Request
Oakland Disclosure Office
1301 Clay Street, Suite 840–S
Oakland, CA 94612

IRS FOIA Request
San Jose Disclosure Office
Mail Stop HQ–4603
55 South Market Street
San Jose, CA 95113

Colorado

IRS FOIA Request
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Springfield Disclosure Office
PO Box 748
Springfield, NJ 07081–0748

New York (Brooklyn, Queens, and the Counties of Nassau and Suffolk)

IRS FOIA Request
Brooklyn Disclosure Office
10 Metro Tech Center
625 Fulton Street
4th Floor, Suite 611
Brooklyn, NY 11201–5404

New York (Manhattan, Staten Island, the Bronx, and the Counties of Rockland and Westchester)

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600 17th Street
Denver, CO 80202–2490

All APO and FPO Addresses

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Headquarters Disclosure Office
CL:GLD:D
1111 Constitution Avenue, NW.
Washington, DC 20224

David Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 02–29077 Filed 11–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 1293

Removal of Parts Concerning Standards of Conduct

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule.

SUMMARY: This document removes information in title 32 of the Code of Federal Regulations concerning the DLA Standards of Conduct Program. Because the Department of Defense has promulgated rules prescribing standards of conduct applicable to all DoD entities, individual DoD Component rules are no longer required. Accordingly, the DLA Standards of Conduct rules may be removed.

EFFECTIVE DATE: November 19, 2002.

ADDRESSES: Defense Logistics Agency, Office of the General Counsel, ATTN: DG, 8725 John J. Kingman Road, STOP 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Saviet (703) 767–5023 or *richard_saviet@hq.dla.mil*.

SUPPLEMENTARY INFORMATION: DoD Directive 5500.7, Standards of Conduct, and DoD 5500.7–R, Joint Ethics Regulation, are available via the Internet at *http://www.dtic.mil/whs/directives/*. Paper copies of the current documents may be obtained, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. Electronic orders may be placed at *http://csrc.nist.gov/publications/ordering-pubs.html*

List of Subjects in 32 CFR Part 1293

Standards of Conduct

PART 1293—[REMOVED]

Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 1293 is removed.

Walter Thomas,

Associate General Counsel, Defense Logistics Agency.

[FR Doc. 02–29288 Filed 11–18–02; 8:45 am]

BILLING CODE 3620–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–138; KY–140; KY–141–200303(a); FRL–7409–1]

Approval and Promulgation of Implementation Plans for Kentucky: Approval of Revisions to the Jefferson County Portion of the Kentucky State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 19, 2002, June 16, 2002, and July 15, 2002 the Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) submitted revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP). The Revisions pertain to definitions, portland cement kilns, abbreviations and acronyms, and solvent metal cleaning.

DATES: This direct final rule is effective January 21, 2003 without further notice, unless EPA receives adverse comment by December 19, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Scott Martin, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382)

Air Pollution Control District of Jefferson County, 850 Barrett Avenue—Suite 200, Louisville, Kentucky 40204. (502/574–6000)

FOR FURTHER INFORMATION CONTACT: Scott Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9036. Mr. Martin can also be reached via electronic mail at *martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Today's Action
II. Background
III. Final Action
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I. Today's Action

The EPA is approving into the Jefferson County portion of the Kentucky SIP revisions which were submitted on February 19, 2002, June 6, 2002, and July 15, 2002.

II. Background

Description of Revisions Submitted on February 19, 2002

Regulation 1.02 ''Definitions'' was revised to amend the current version to ensure consistency with with current definitions used by EPA and to remove definitions that are no longer used by Jefferson County.

Description of Revisions Submitted on June 6, 2002

Regulation 6.50 ''NO_X Requirements for Portland Cement Kilns'' is being added by Jefferson County to incorporate the requirements of Kentucky Division for Air Quality (DAQ) regulation 401 KAR 51.170 NO_X Requirements for cement kilns. The Kosmos Cement Company (Kosmos), which is located in Jefferson County, is the only company in the Commonwealth of Kentucky that has a Portland cement kiln. Thus, this regulation applies only to Kosmos.

Description of Revisions Submitted on July 15, 2002

Regulation 1.03 ''Abbreviations and Acronyms'' is being amended to make technical corrections to the abbreviations and acronyms, add new

abbreviations and acronyms, and remove abbreviations and acronyms that are no longer used.

Regulation 1.19 ''Administrative Hearings'' is being added. This regulation is being added to establish an administrative hearing process for resolving alleged violations and providing an opportunity to be heard for persons who consider themselves aggrieved by actions on orders or permits.

Regulation 6.18 ''Standards of Performance for Existing Solvent Metal Cleaning Equipment'' is being revised. The main purpose of the action is to remove requirements that are no longer applicable. In early 2000, a requirement was added that specified that after March 1, 2000, no solvent with a vapor pressure greater than 1 mm Hg may be sold for or used in cold cleaners in Jefferson County. Because the cold cleaner material compliance date is now in the past, other requirements for solvents with haigher vapor pressures are no longer applicable, and therefore may be removed.

Another purpose of the action is to combine Regulation 7.18 ''Standards of Preformance for New Solvent Metal Cleaning Equipment'' with Regulation 6.18 because both regulations have identical requirements and differ only in the applicability to existing or newly affected facilities. By combining these regulations, Regulation 7.18 is no longer needed and is being repealed.

III. Final Action

The EPA is approving the revisions to the Jefferson County portion of the Kentucky SIP. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 21, 2003 without further notice unless the Agency receives adverse comments by December 19, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 21, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely 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 21, 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 31, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

2. Section 52.920 is amended by revising the entries for ''1.02, 1.03 and 6.18;'' adding two new entries in numerical order for ''1.19 and 6.50,'' and removing the entry for ''7.18;'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
Reg 1	General Provisions. . . .			
*	*	*	*	*
1.02	Definitions	12/19/02	[insert FRN publication]	12/19/01
1.03	Abbreviations and Acronyms	12/19/02	[insert FRN publication]	5/15/02
*	*	*	*	*
1.19	Administrative Hearings	12/19/02	[insert FRN publication]	5/15/02
*	*	*	*	*
Reg 6	Standards of Performance for Existing Affected Facilities. . . .			
*	*	*	*	*
6.18	Standards of Performance for Existing Solvent Metal Cleaning Equipment	12/19/02	[insert FRN publication]	5/15/02
*	*	*	*	*
6.50	NO_X Requirements for Portland Cement Kilns	12/19/02	[insert FRN publication]	3/20/02
*	*	*	*	*

* * * * *

[FR Doc. 02–29179 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7409–2]

Georgia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Georgia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Georgia's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on January 21, 2003 unless EPA receives adverse written comment by December 19, 2002. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440. We must receive your comments by December 19, 2002. You can view and copy Georgia's application from 8 a.m. to 4:30 p.m. at The Georgia Department of Natural Resources, Environmental Protection Division, 205 Butler Street, Suite 1154 East Tower, Atlanta, Georgia 30334–9000, and from 8:30 a.m. to 3:45 p.m., EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, Phone number (404) 562–8190, Kathy Piselli, Librarian.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency. Phone: (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Georgia's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Georgia Final authorization to operate its hazardous waste program with the changes described in the authorization application. Georgia has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Georgia, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Georgia subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Georgia has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports.
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Georgia is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Georgia Previously Been Authorized for?

Georgia initially received Final authorization on August 7, 1984, effective August 21, 1984 (49 FR 31417), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 7, 1986, effective September 18, 1986 (51 FR 24549), July 28, 1988, effective September 26, 1988 (53 FR 28383), July 24, 1990, effective September 24, 1990 (55 FR 30000), February 12, 1991, effective April 15, 1991 (56 FR 5656), May 11, 1992, effective July 10, 1992 (57 FR 20055), November 25, 1992, effective January 25, 1993 (57 FR 55466), February 26, 1993, effective April 27, 1993 (58 FR 11539), November 16, 1993, effective January 18, 1994 (58 FR 60388), April 26, 1994, effective June 27, 1994 (59 FR 21664), May 10, 1995, effective July 10, 1995 (60 FR 24790), August 30, 1995, effective October 30, 1995 (60 FR 45069), March 7, 1996, effective May 6, 1996 (61 FR 9108), September 18, 1998, effective November 17, 1998 (63 FR 49852), October 14, 1999, effective December 13, 1999 (64 FR 55629), and November 28, 2000, effective March 30, 2001 (66 FR 8090).

G. What Changes Are We Authorizing With Today's Action?

On June 25, 2002, Georgia submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. Georgia's revision consists of provisions promulgated July 1, 1999 through June 30, 2000, otherwise known as RCRA Cluster X. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Georgia Final authorization for the following program changes:

Description of Federal requirement	*Federal Register*	Analogous State authority [1]
Checklist 181, Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps.	64 FR 36466–36490, 7/6/99	Georgia Hazardous Waste Management Act (GHWMA), Official Code of Georgia Annotated (O.C.G.A.) §§ 12–8–62(10), (14), (20), and (23), 12–8–64 (1) (A), (B), (D), (E), and (I), 12–8-65(a)(16) and (21); Rules 391–3-11-.02, 391–3–11-.07(1), 391–3-11-.10(2), 391–3–11-.10(1), 391-3–11-.16, 391–3–11-.11(1)(a), and 391–3–11-.18.
Checklist 182, NESHAPS: Hazardous Air Pollutant Standards for Combustors; Miscellaneous Units, and Secondary Lead Smelters; Clarification of BIF Requirements; Technical Correction to Fast-track Rule.	64 FR 52828-53077; 64 FR 63209-63213, 9/30/99; 11/19/99.	GHWMA, O.C.G.A. §§ 12–8–62(10) and (20), 12–8–64(1)(D) and (J), and 12–8–65(a)(16) and (21); Rule 391–3–11-.07(1). GHWMA, O.C.G.A. §§ 12–8–62 (4), (10), and (20), 12–8–64(1)(A), (C), and (I), and 12–8–65(a)(3), (16), and (21); Rules 391–3–11-.10(2), 391–3–11-.11(10)(1), 391-3–11-.11(3)(h), and 391–3–11-.11(10). GHWMA, O.C.G.A. §§ 12–8–62 (4), (10), and (20), 12–8-64(1)(A),(C), and (I), and 12–8-65(a)(3), (16), and (21); Rule 391–3–11-.10(2). GHWMA, O.C.G.A. §§ 12–8–62 (4), (10), and (20), 12–8–64 (1)(A), (B), (C), (D), (E), and (F), and 12–8–65(a)(3), (16), and (21), 12–8–66; Rule 391–3–11-.11(7)(d). GHWMA, O.C.G.A. §§ 12–8–62 (4), (10), and (20), 12–8–64 (1) (A), (B), (C), (D), (E), and (F), and 12–8–65(a) (3), (16), and (21), 12–8–66; Rule 391–3–11-.11(7)(d). GHWMA, O.C.G.A. §§ 12–8–62 (10), (13), and (20), 12–8–64(1)(A), (B), (C), (D), (E), and (F), and 12–8–65(a)(3), (16), and (21); Rule 391–3–11-.02, and 391–3–11-.10(3). GHWMA, O.C.G.A. §§ 12–8–62 (10), (20), and (24), 12–8–64(1)(A), (B), (C), (D), and (I), and 12–8-65(a)(3), (16), and (21), 12–8- 66; Rule 391–3–11-.10(3), 391–3-11-.11(3)(h), and 391–3–11-.11(13). GHWMA, O.C.G.A. §§ 12–8–62 (7), (10), (13), (20), and (24), 12–8-64(1)(A), (D), and (I), and 12–8-65(a)(16), and (21); Rule 391–3-11-.10(3). GHWMA, O.C.G.A. §§ 12–8–62 (7), (10), (13), (20), and (23), 12–8-64(1)(A), (B), (C), (D), and (I), and 12–8–65(a)(3), (16), and (21); Rule 391–3–11-.10(3).
Checklist 183, Land Disposal Restrictions Phase IV-Technical Corrections.	64 FR 56469-56472, 10/20/99	GHWMA, O.C.G.A. §§ 12–8–62 (10), (13), (14), and (20), 12–8-64(1)(B), (D), and 12–8-65(a)(16), and (21); Rule 391–3-11-.07(1). GHWMA, O.C.G.A. §§ 12–8–62 (4), (7), (9), (10), (13), (14), (20), (23) and (24), 12–8–64(1) (A), (B), (D), (E), (I), and (J), and 12–8–65(a) (10), (16) (17), (19), and (21); Rule 391–3–11-.16. GHWMA, O.C.G.A. §§ 12–8–62 (4), (7), (9), (10), (13), (14), (20), (23) and (24), 12–8–64(1) (A), (B), (D), (E), (I) and (J), and 12–8–65(a)(10), (14), (16), (17), (19), and (21), 12–8–69(a); Rule 391–3–11-.16. GHWMA, O.C.G.A. §§ 12–8–62 (4), (7), (9), (10), (13), (14), (20), (23) and (24), 12–8–64(1) (A), (B), (D), (E), (I) and (J), and 12–8–65(a)(10), (14), (16), (17), (19), and (21); Rule 391–3–11-.16. GHWMA, O.C.G.A. §§ 12–8–62 (4), (7), (9), (10), (13), (14), (20), (23) and (24), 12–8–64(1) (A), (B), (D), (E), (I) and (J), and 12–8–65(a)(10), (14), (16), (17), (19), and (21); Rule 391–3–11-.16.
Checklist 184, Accumulation Time for Waste Water Treatment Sludges.	65 FR 12378-12398, 03/08/00	GHWMA, O.C.G.A. §§ 12–8–62 (10), (13), (15), and (21), 12–8-64(1)(A), (B), (D),and (E) and 12–8–65(a) (10), (16), and (21); Rule 391–3–11-.08(1).
Checklist 185, Vacatur of Organobromine Production Waste Listings.	65 FR 14472-14475, 03/17/00	GHWMA, O.C.G.A. §§ 12–8–62 (10), of (13), (14), and (20), 12–8-64(1)(B), (D), and 12–8-65(a)(16), and (21); Rule 391–3- 11-.07(1). GHWMA, O.C.G.A. §§ 12–8–62(4), (7), (10), (13), (14), (20), (23), and (24), 12–8–64(1) (A), (B), (D), (E), (I), and (J) and 12–8–65(a)(10), (14), (16), (17), (19),and (21); Rule 391–3–11-.16.
Checklist 187, Petroleum Refining Process Wastes—Clarification.	64 FR 36365-36367, 06/08/00	GHWMA, O.C.G.A. §§ 12–8–62(10), (12), (13), (20), and (24), 12–8-64(1)(A), (B), (D), (E), (F), (I), (J) and (L), 12–8–65(a)(16) and (21); Rule 391–3–11-.07(1).

[1] The Georgia provisions are from the Georgia Hazardous Waste Management Regulations effective November 16, 2000.

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements in this program revision considered to be more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

Georgia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA

requirements for which Georgia is not yet authorized.

J. What Is Codification and Is EPA Codifying Georgia's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart L for this authorization of Georgia's program until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. 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 document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective January 21, 2003.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 12, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–29177 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2818; MM Docket No. 01–224; RM–10101]

Radio Broadcasting Services; Shelbyville and LaVergne, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WYCQ, Inc., reallots Channel 275C1 from Shelbyville to LaVergne, Tennessee, as the community's first local aural transmission service, and modifies Station WBUZ(FM)'s license accordingly. *See* 66 FR 48107, September 18, 2001. Channel 275C1 can be reallotted to LaVergne in compliance with the Commision's minimum distance separation requirements at Station WBUZ(FM)'s presently authorized site. The coordinates for Channel 275C1 at LaVergne are 35–48–01 North Latitude and 86–37–17 West Longitude.

DATES: Effective December 9, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–224, adopted October 16, 2002, and released October 25, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 54, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding LaVergne, Channel 275C1 and by removing Shelbyville, Channel 275C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–29237 Filed 11–18–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2816; MM Docket No. 01–341; RM–10346]

Radio Broadcasting Services; Coosada, Alabama

AGENCY: Federal Communications Commission.

ACTION: Final rule, petition for reconsideration.

SUMMARY: This document grants a petition for reconsideration filed by Media Equities Corporation, seeking reconsideration of the *Report and Order* in this proceeding, and requesting deletion of Channel 226A at Coosada, Alabama. *See* 67 FR 20459, April 25, 2002. That *Report and Order* allotted, at Media Equities' request, Channel 226A at Coosada, Alabama. Media Equities requests reconsideration of this allotment and withdraws its expression of interest. With no other expression of interest in the allotment, the allotment is deleted.

DATES: Effective December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 01–341, adopted October 16, 2002, and released October 25, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals ll, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Coosada, Channel 226A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–29238 Filed 11–18–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021101265–2265–01; I.D. 101602A]

RIN 0648–AQ50

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Exemption Supplement to Framework Adjustment 35

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to modify the regulations implementing Framework Adjustment 35 (Framework 35) to the Northeast Multispecies Fishery Management Plan (FMP). Framework 35 established an exempted small mesh whiting fishery in the Gulf of Maine (GOM), near Provincetown, MA. The fishery occurs from September 1 through November 20 each year and requires the use of raised footrope trawl gear. This final rule modifies the boundaries of the current exemption area through inclusion of an area east of Cape Cod and allows the fishery to continue in the newly added eastern portion of the exemption area through December 31 of each year.

DATES: Effective November 14, 2002.

ADDRESSES: Copies of Amendment 12 to the FMP, its regulatory impact review (RIR), the initial regulatory flexibility analysis contained within the RIR, and its final Supplemental Environmental Impact Statement, along with Framework 35, its RIR and Environmental Assessment (EA), and other supporting documents for both Amendment 12 and Framework 35, and the EA and RIR prepared for this final rule are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, NMFS, 978–281–9272.

SUPPLEMENTARY INFORMATION: The final rule implementing Framework 35 (65 FR 49942, August 16, 2000) established an exempted whiting raised footrope trawl fishery in an area in upper Cape

Cod Bay effective September 1, 2000, based on the low bycatch of regulated multispecies encountered in the fishery while using raised footrope trawl gear. The overall reduction of regulated multispecies bycatch has been significant with the raised footrope trawl gear compared to landings and bycatch of regulated multispecies in regulated multispecies directed fisheries. Also, use of the raised footrope trawl has been demonstrated to significantly reduce total bycatch compared to traditional whiting trawl gear.

The Northeast (NE) multispecies regulations, at 50 CFR 648.80(a)(8)(i)(A), specify that, in order for any fishery to occur in the GOM/Georges Bank (GB) Regulated Mesh Area, it must be shown to have a bycatch of regulated multispecies that is less than 5 percent of the catch of all species. This regulation is intended to prevent the bycatch and discard of large amounts of regulated multispecies that could be caught in fisheries targeting other species. Small mesh bottom trawl fisheries are of particular concern because of the interactions of bottom fish, the limited selectivity of small mesh, and the high potential for regulated multispecies bycatch.

In May 2002, the Massachusetts Division of Marine Fisheries (MADMF) submitted a request to the Administrator, Northeast Region, NMFS (Regional Administrator) for an exempted fishery in the so-called ''Area 3'' east of Cape Cod and immediately adjacent to the present raised footrope trawl exempted fishery. Since 1997, the MADMF has tested the raised footrope trawl design in Area 3 east of Cape Cod from September 1 through December 31 each year. Section 648.80(a)(8)(i)(A) of the NE multispecies regulations provides for expansion of the existing exemption area boundaries, to include Area 3, if the Regional Administrator, after consultation with the New England Fishery Management Council (Council), determines that the percentage of regulated multispecies bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives of the FMP.

The Regional Administrator consulted with the Council and, at its June 24–26, 2002, meeting, the Council voted to support the MADMF request to the Regional Administrator to grant exempted fishery status in Area 3 east of Cape Cod. The Council asked that NMFS base its decision on the results of MADMF-funded sea sampling, which demonstrated that regulated multispecies bycatch had been reduced to less than 5 percent, by weight, of the total catch.

In the last 2 years, the landings of whiting in the experimental area have been substantial and have exceeded 800,000 lb (362,874 kg) annually. Effort in 2001 increased by approximately 50 percent over 2000, with the number of participating vessels increasing from 10 to 15, and reported trips increased from 108 to 164. MADMF expended significant effort in documenting fishing performance in 2000 and 2001. There were 269 observed and unobserved trips in the experimental raised footrope trawl fishery in Area 3 during 2000 and 2001. According to the data submitted by MADMF, the overall percentage of regulated multispecies bycatch in the experimental fishery was 4 percent on seven observed trips, and 0.9 percent on 80 unobserved trips in 2000; and 1.7 percent on 18 observed trips, and 1.9 percent on 164 unobserved trips in 2001. The data indicate that the majority of the trips with regulated multispecies bycatch percentages higher than 5 percent resulted from either very low whiting catches, or apparently aborted trips (trips with total catch less than 500 lb (226.8 kg)), and not from significantly high levels of regulated multispecies bycatch. With a few exceptions, the amount of regulated multispecies bycatch on these trips was no greater than the trips that fell below 5 percent regulated multispecies bycatch.

The Regional Administrator has a reasonable basis to determine that a modification of the boundaries of the Raised Footrope Trawl Whiting Fishery Exemption Area, to include the adjacent area east of Cape Cod (Area 3), will not exceed the 5–percent bycatch allowance of regulated multispecies. In addition, while the current exempted fishery area is closed to exempted fishing on November 20 of each year in order to minimize expected cod bycatch (while still maximizing whiting catch), this rationale does not apply to Area 3 east of Cape Cod. While the landings data for Framework 35 justify closing the existing exempted fishery on November 20, the landings data for the newly added eastern portion of the Raised Footrope Trawl Whiting Fishery Exemption Area support the eastern portion remaining open through December 31.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and opportunity for comment under 5 U.S.C. 553(b)(B). The proposed exempted fishery is seasonal, intended to begin on September 1 and continue only through the end of the calendar year. Fishermen depend upon access to this fishery (for the past five years, they have been able to participate in the experimental exempted fishery), and this dependence has been increased as a result of recent changes to the NE multispecies regulations as a result of the *Conservation Law Foundation, et al.* v. *Evans, et al.* Court order.

Immediate publication of this action as a final rule will provide the fishing industry with full access to the seasonal whiting fishery in as quick a timeframe as possible. Should implementation of this action be delayed, the fishing industry would be denied access to this alternative fishery for a significant part of the fishing season for whiting. Because this is a seasonal fishery, there is an urgency to conclude the rulemaking process and implement the exemption as soon as possible. Delays in implementation are contrary to the public interest and would have potentially significant adverse impacts on industry, who would be denied access to this fishery. Therefore, since this action relieves a burden to the fishing industry without compromise of the conservation objective, it would be contrary to the public interest to delay the implementation of this rule through prior notice and comment.

Moreover, it would be impracticable to provide prior public notice and comment. Consideration of this exempted fishery proceeded with the utmost diligence. The Regional Administrator (RA) could not act upon MADMF's application until consultation with the New England Fishery Management Council. Consultation occurred at the first opportunity at the end of June 2002. Following this meeting, the RA instructed her staff to begin analyzing the data submitted by Massachusetts in order to determine (1) whether the data supported the creation of an exempted fishery under 50 CFR § 648.80(a)(8)(i)(A); and (2) the type of National Environmental Policy Act document required to analyze the potential impacts on the human environment. The NMFS, Northeast Regional Office determined that in order to ensure adequate consideration of the environmental impacts of the exempted whiting fishery, the preparation of an Environmental Assessment was necessary.

Finally, the public has been given several opportunities to comment on the creation of this exempted fishery. Public meetings were held by the Council to discuss inclusion of Area 3 (which roughly encompasses the area defined in this rule) in the exempted fishery

during the development of management measures for Framework Adjustment 35 and Amendment 12 to the FMP. The development of Amendment 12 to the FMP included the preparation of a full EIS, including notification in the **Federal Register** and a series of public hearings on the proposed management system, as well as proposed and final rulemaking.

In addition, prior to requesting that the existing exemption area be expanded, MADMF had requested, and been granted, experimental exempted fishery permits (EFP) for this expanded area in each of the previous 5 years. Each request for an EFP, which covered the same area and approximately the same number of fishing vessels as would be likely to participate in the exempted fishery, involved a prior notice to the public and solicitation for comments in the **Federal Register**. Lastly, the RA is required by regulation to consult with the Council prior to making a decision on the exemption request. This consultation occurred at the end of June 2002, at a Council meeting, with full prior public notification (the agenda item was specific to the request for input on the request and was noted in all public announcements of the agenda, including a **Federal Register** notice). These processes provided an opportunity for public comment to be considered. Additional opportunity would unnecessarily delay the promulgation of a rule benefitting fishers without any likely benefit coming from the delay.

The AA, under 5 U.S.C. 553(d)(3), finds good cause to waive the 30–day delay in the effectiveness of these measures, as this rule relieves a restriction. Because this fishery is set to close on November 20, 2002, additional fishing opportunities would be prohibited. In order to avoid an interruption in fishing activity in the expanded area, it is necessary to waive the 30–day delayed effectiveness period. This would allow the continued harvest of the whiting stock for the remainder of the calendar year without compromising the conservation objective.

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

Because prior notice and opportunity for public comment are not required for this final rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 13, 2002.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.80, paragraph (a)(15) introductory text (including the table) and paragraph (a)(15)(i)(F) are revised to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(15) *Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. The exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(h) and (i). The Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

(September 1 through November 20)

Point	N. Lat.	W. Long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 10	42°04.75′	70°16.95′
RF 11	42°01.9′	70°14.75′
RF 12	41°59.45′	70°23.65′
RF 13	42°07.85′	70°30.1′
RF 1	42°14.05′	70°08.8′

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

(November 21 through December 31)

Point	N. Lat.	W. Long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 1	42°14.05′	70°08.8′

(i) * * *

* * * * *

(F) Fishing may only occur from September 1 through November 20 of each fishing year, except that it may occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area from November 21 through December 31 of each fishing year.

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[FR Doc. 02–29351 Filed 11–14–02; 3:34 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 223
Tuesday, November 19, 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

Coast Guard

33 CFR Parts 154 and 155

[USCG–2001–8661]

RIN 2115–AG05

Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; meeting and extension of comment period.

SUMMARY: The Coast Guard will hold a public meeting to let members of the public present oral comments on proposed rules for planholders transporting or transferring petroleum oil. A proposed rule published on October 11, 2002, would require changes to the requirements for oil-spill removal equipment under vessel response plans and marine transportation-related facility response plans. These changes would increase the minimum available spill removal equipment required for tank vessels and facilities, add requirements for new response technologies, and clarify methods and procedures for responding to oil spills in coastal waters.

DATES: The Coast Guard will hold this public meeting on Wednesday, December 18, 2002, from 9:30 a.m. to 3:30 p.m., except that the meeting may close early if all business is finished. Other comments must reach the Docket Management Facility on or before April 8, 2003.

ADDRESSES: The Coast Guard will hold this public meeting in room 4618, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

You may submit your comments directly to the Docket Management Facility. To make sure that your comments and related material are not entered more than once in the docket [USCG–2001–8661], please submit them by only one of the following means:

(1) By mail to the Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Facility maintains the public docket for this notice. Comments, and related material as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401, on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call or e-mail Mr. Robert Pond, G–MOR, Coast Guard, at telephone 202–267–6603, or *rpond@comdt.uscg.mil.* For questions on viewing, or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages you to submit comments and related material concerning the notice of proposed rulemaking (NPRM) on Vessel and Facility Response Plans for Oil published October 11, 2002 [67 FR 63331]. If you do so, please include your name and address, identify the docket number [USCG–2001–8661] and give the reasons for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to seek special assistance at the meeting, contact Mr. Pond at the address or phone number under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Background Information

In 1996, the Coast Guard published final tank vessel response plan regulations [61 FR 1052, January 12, 1996] and final MTR facilities response plan regulations [61 FR 7890, February 29, 1996]. These regulations contain minimum on-water oil removal equipment requirements that planholders transporting or transferring petroleum oil are required to meet in planning for an oil discharge. These regulations also state that the Coast Guard will periodically review the existing oil removal equipment requirements to determine if increases in mechanical recovery systems and additional requirements for new response technologies are practicable.

On October 11, 2002, we published a notice of proposed rulemaking in the **Federal Register** [67 FR 63331] entitled ''Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions''. It proposes an increase in the minimum available spill removal equipment required for tank vessels and facilities, added requirements for new response technologies, and it clarifies methods and procedures for responding to oil spills in coastal waters. A letter sent to the docket gave a number of reasons supporting the need for a public meeting and extension of time to file comments on the NPRM. The Coast Guard agrees with some of those reasons, so we are planning to hold the meeting announced by this notice, and we are extending the comment period until April 8, 2003.

Public Meeting

The Coast Guard encourages interested persons to attend the meeting and present oral comments during the meeting. The meeting is open to

members of the public. Please note that the meeting may close early if all business is finished. We request that members of the public who plan to attend this meeting contact Mr. Pond at the telephone number or e-mail address listed under **FOR FURTHER INFORMATION CONTACT** so that building security officials may be notified. If you would like to present an oral comment during the meeting, please notify Mr. Pond no later than, December 11, 2002. If you are unable to attend the meeting, you may submit comments as indicated under **SUPPLEMENTARY INFORMATION.**

Dated: November 12, 2002.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 02–29168 Filed 11–18–02; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 111

Bound Printed Matter: Flat-Size Mail Co-Packaging, Co-Sacking, and Higher DDU Rate Minimum Weight

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing revisions to the *Domestic Mail Manual* (DMM) that would provide new mail preparation standards for co-packaging and co-sacking flat-size Bound Printed Matter. The standards for co-packaging would be optional, while the standards for co-sacking would be mandatory beginning on June 1, 2003. Prior to that date, the use of the co-sacking standards would be optional.

Also proposed is a change in the minimum weight for Presorted Bound Printed Matter flats claimed at the destination delivery unit (DDU) rate. The minimum weight for such pieces is proposed to change from ''more than 1 pound'' to ''more than 20 ounces.''

DATES: Submit comments on or before December 19, 2002.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, U.S. Postal Service, 1735 N. Lynn Street, Room 3025, Arlington, VA 22209–6038. Written comments may also be submitted via fax to 703–292–4058. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jane Stefaniak at (703) 292–3548, Mail Preparation and Standards, United States Postal Service.

SUPPLEMENTARY INFORMATION: Through several past rulemakings (65 FR 52480, 66 FR 28659, and 66 FR 58944) the Postal Service has established mail preparation standards in *Domestic Mail Manual* (DMM) M900 for co-packaging and co-traying flat-size First-Class Mail, and for co-packaging and co-sacking flat-size Periodicals and Standard Mail. At this time, the Postal Service is proposing to further extend these standards to allow the co-packaging and co-sacking of flat-size Bound Printed Matter pieces that are compatible with processing on the automated flat sorting machine (AFSM) 100.

Bound Printed Matter Presorted rate flats (no barcode required) and Presorted rate flats that bear a ZIP+4 or delivery point barcode and claim the barcoded discount are usually processed by the Postal Service within the same operation. For this reason, allowing packages of flat-size barcoded and nonbarcoded pieces to be combined within the same container (*i.e.*, co-sacking) can provide operational efficiencies that could reduce costs. Additionally, the need for the Postal Service to segregate flat-size barcoded and nonbarcoded pieces within a package no longer exists due to advances, such as the optical character reader (OCR) and image lift capabilities of the AFSM 100. Therefore, it would not be operationally beneficial to continue to require the separate preparation of Bound Printed Matter Presorted rate flats that qualify for the barcoded discount and Presorted rate flats that do not qualify for the barcoded discount. Continuing to segregate barcoded and nonbarcoded flats would result in more packages and sacks, reduce the average depth of sort, and cause additional workhours for the Postal Service associated with sorting, opening, and prepping flats for processing.

Under the proposed co-sacking standards for flat-size Bound Printed Matter, mailers would be required, beginning June 1, 2003, to co-sack (*i.e.*, sort into the same sack) packages of Presorted rate pieces qualifying for the barcoded discount with packages of Presorted rate pieces not claiming the barcoded discount. Additionally, mailers would have the option to co-package (*i.e.*, sort into the same package) flat-size Bound Printed Matter Presorted rate pieces qualifying for the barcoded discount and Presorted rate pieces not qualifying for the barcoded discount within the same package. Co-packaged pieces would be required to be co-sacked under DMM M910. The containerization methods permitted for First-Class Mail, Periodicals, and Standard Mail in existing DMM M920, M930, and M940 would not be available for Bound Printed Matter.

The proposed standards for the optional co-packaging of Bound Printed Matter flats would include the following:

- All pieces would be required to weigh 20 ounces or less and meet the AFSM 100 criteria for automation-compatible flat-size mail in DMM M820.
- Presorted rate pieces qualifying for the barcoded discount would be required to be part of a Presorted rate mailing of at least 300 flat-size pieces and be prepared under DMM M820. Presorted rate pieces not claiming the barcoded discount would be required to be part of a mailing of at least 300 pieces prepared under DMM M722.
- Each piece in the Presorted rate mailing qualifying for the barcoded discount would be required to bear a correct and readable ZIP+4 or delivery point barcode (DPBC) under DMM C840. Each piece in the Presorted rate mailing would be required to bear a correct and readable 5-digit barcode under DMM C840.
- Presorted rate pieces qualifying for the barcoded discount would be required to be sorted together with the Presorted rate pieces, but only one physical package for each logical presort destination would be permitted to include pieces for both rate categories, unless presented using an approved manifest mailing system under DMM P910.
- Mailing that are co-packaged pieces would be required to be co-sacked under DMM M910.

The proposed standards for the co-sacking of Bound Printed Matter flats would include the following:

- Packages prepared as part of the Presorted rate mailing qualifying for the barcoded discount and packages prepared as part of the Presorted rate mailing not qualifying for the barcoded discount would be required to be co-sacked, effective June 1, 2003.
- Packages of flats qualifying for the barcoded discount that are co-sacked with packages of Presorted rate flats would be required to be part of the same mailing job.
- Both the Presorted rate mailing qualifying for the barcoded discount and the Presorted rate mailing not qualifying for the barcoded discount would be required to separately meet the applicable rate eligibility and volume requirements.

• Packages that are co-sacked under DMM M910 would not be required to be co-packaged.

Standardized documentation under DMM P012 would be required for mailings prepared under the proposed standards for co-packaging and co-sacking as follows:

• Documentation for a co-packaged mailing would be required to indicate by zone (when applicable) the number of Presorted rate pieces qualifying for the barcoded discount and the number of Presorted rate pieces not claiming the barcoded discount that are contained in each package.

• Documentation for a co-sacked mailing would be required to indicate by zone (when applicable) for each sack sortation level, the number of Presorted rate pieces qualifying for the barcode discount, and the number of Presorted rate pieces not claiming the barcoded discount that are contained in each sack.

If this proposal is adopted, mailers could begin using the co-packaging and co-sacking standards for Bound Printed Matter flats immediately. The standards for co-packaging would be optional. The Postal Service is proposing the mandatory use of the co-sacking preparation standards beginning on June 1, 2003. The delayed implementation date would ensure that mailers could meet all operational requirements for the co-sacking standards.

As part of this notice, an additional DMM revision is proposed that would change the minimum weight in DMM E752.4.2 for Presorted rate Bound Printed Matter flats claimed at the destination delivery unit (DDU) rates from ''more than 1 pound'' to ''more than 20 ounces.'' The corresponding text in DMM R700.2.5 would also be revised. Based on operational conditions and requirements, this proposed change would position the minimum weight for DDU rate Presorted Bound Printed Matter flats to begin after the point where the maximum weight of 20 ounces for AFSM 100 Bound Printed Matter flats ends. The maximum weight for AFSM 100 Bound Printed Matter flats was published in a previous **Federal Register** final rule (67 FR 40164). That final rule established a maximum weight of 20 ounces for AFSM 100 Bound Printed Matter flats which became effective on June 30, 2002. This change to the minimum weight for DDU rate Bound Printed Matter flats would allow the Postal Service to maximize the use of its automated processing equipment.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Domestic Mail Manual*, incorporated in the *Code of Federal Regulations*. See 39 CFR 111.1.

List of Subject in 39 CFR Part 111

Administrative Practice and Procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

E ELIGIBILITY

* * * * *

E700 Package Services

* * * * *

E752 Bound Printed Matter

* * * * *

4.0 DESTINATION DELIVERY UNIT (DDU) RATES

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4.2 Presorted Flats

[Revise 4.2 by changing ''1 pound'' to ''20 ounces'' in order to align the weight with the previously implemented AFSM 100 requirements, to read as follows:] Presorted flats that weigh more than 20 ounces in 5-digit sacks, on 5-digit scheme or 5-digit pallets, or prepared as bedloaded 5-digit packages may claim DDU rates. Mail must be entered at the appropriate facility under 4.1. Presorted flats weighing 20 ounces or less are not eligible for the DDU rate.

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M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

* * * * *

1.3 Preparation Instructions

For purposes of preparing mail:

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[Revise 1.3ad to read as follows:]

ad. Co-packaging is an alternate preparation method available under M950 for First-Class Mail, Periodicals, and Standard Mail that allows the combining of flat-size automation rate and Presorted rate pieces within the same package under the single minimum package size requirement. Co-packaging is also available for combining flat-size Bound Printed Matter Presorted pieces qualifying for the barcoded discount and Presorted rate pieces not qualifying for the barcoded discount within the same package. Pieces may not be combined in more than one physical package for each logical presort destination unless presented using an approved manifest mailing system under P910.

1.4 Mailing

Mailings are defined as:

* * * * *

[Revise item e by adding references to the advanced preparation options for flat-sized Bound Printed Matter in M900, to read as follows (the remainder of 1.4 is unchanged):]

e. Package Services. Except for single-piece rate pieces not otherwise subject to a minimum mailing requirement that are presented under an approved manifest mailing system under P910, the types of Package Services listed below may not be part of the same mailing even if in the same processing category. See M910 and M950 for the advanced preparation options available for flat-size Bound Printed Matter.* * *

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M030 Containers

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M032 Barcoded Labels

1.0 BASIC STANDARDS—TRAY AND SACK LABELS

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Exhibit 1.3a 3-Digit Content Identifier Numbers

[Revise Exhibit 1.3a by adding new categories and Content Identifier Numbers for co-sacked Bound Printed Matter, to read as follows:]

PACKAGE SERVICES

* * * * * * *

BPM Flats—Co-Sacked Barcoded and Presorted:		
5-digit sacks	648	PSVC FLTS 5D BC/NBC.
3-digit sacks	661	PSVC FLTS 3D BC/NBC.
SCF sacks	667	PSVC FLTS SCF BC/NBC.
ADC sacks	668	PSVC FLTS ADC BC/NBC.
Mixed ADC sacks	669	PSVC FLTS BC/NBC WKG.

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M700 Package Services

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M720 Bound Printed Matter

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M722 Presorted Bound Printed Matter

1.0 BASIC STANDARDS

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[Add new 1.5 to read as follows:]

1.5 Co-Sacking Flats With Barcoded Mail

The following standards apply:

a. If the mailing job contains a carrier route mailing, a Presorted mailing qualifying for the barcoded discount, and a Presorted rate mailing, then it must be prepared using one of the following options:

(1) All three mailings in the mailing job must be prepared using the appropriate standards in M722, M723, and M820.

(2) The carrier route mailing must be prepared under E712 and M723, and the Presorted mailing qualifying for the barcoded discount and the Presorted rate mailing must be prepared under the co-sacking standards in M910.

b. If the mailing job contains a Presorted mailing qualifying for the barcoded discount and a Presorted rate mailing, then it must be prepared using one of the following options:

(1) Both mailings must be prepared using the appropriate preparation in M722 and M820.

(2) Both mailings must be prepared under the co-sacking standards in M910.

c. If the mailing job contains a carrier route mailing and a Presorted rate mailing, then it must be separately sacked under M722 and M723.

d. At the mailer's option, Presorted pieces qualifying for the barcoded discount may be co-packaged with Presorted rate pieces under M950.

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M800 All Automation Mail

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M820 Flat-Size Mail

1.0 BASIC STANDARDS

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1.9 Co-Traying, Co-Sacking, and Co-Packaging With Presorted Rate Mail

The following standards apply:

* * * * *

[Add new item d for Bound Printed Matter to read as follows:]

d. Bound Printed Matter:

(1) If the mailing job contains a carrier route mailing, a Presorted mailing qualifying for the barcoded discount, and a Presorted rate mailing, then it must be prepared using one of the following options:

(a) All three mailings in the mailing job must be prepared using the appropriate preparation in M722, M723, and M820.

(b) The carrier route mailing must be prepared under E712 and M723, and the Presorted mailing qualifying for the barcoded discount and the Presorted rate mailing must be prepared under the co-sacking standards in M910.

(2) If the mailing job contains only a Presorted rate mailing qualifying for the barcoded discount and a Presorted rate mailing, then it must be prepared using one of the following options:

(a) Both mailings must be prepared using the appropriate preparation in M722 and M820.

(b) Both mailings must be prepared under the co-sacking standards in M910.

(3) If the mailing job contains only a carrier route mailing and a Presorted mailing qualifying for the barcoded discount, then it must be separately prepared under M723 and M820.

(4) At the mailer's option, Presorted pieces qualifying for the barcoded discount may be co-packaged with Presorted rate pieces under M950.

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6.0 BOUND PRINTED MATTER

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6.2 Sack Preparation and Labeling

[Revise 6.2 to read as follows:]

Preparation sequence, sack size, and labeling:

a. 5-digit (required); minimum 20 addressed pieces; labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination of packages, preceded for military mail by correct prefix under M031.

(2) Line 2: ''PSVC FLTS 5D BC.''

b. 3-digit (required); minimum 20 addressed; labeling:

(1) Line 1: L002, Column A.

(2) Line 2: ''PSVC FLTS 3D BC.''

c. SCF (required for each 3-digit ZIP Code served by the SCF of the origin (verification) office; optional for each 3-digit ZIP Code served by the SCF of an entry office other than the origin office); minimum 20 addressed pieces; labeling:

(1) Line 1: L005.

(2) Line 2: ''PSVC FLTS SCF BC.''

d. ADC (required); minimum 20 addressed pieces (use L004 to determine ZIP Codes served by each ADC); labeling:

(1) Line 1: L004.

(2) Line 2: ''PSVC FLTS ADC BC.''

e. Mixed ADC (required); no minimum; labeling:

(1) Line 1: L803. If entered by mailer at an ASF or BMC, L802.

(2) Line 2: ''PSVC FLTS BC/NBC WKG.''

* * * * *

M900 Advanced Preparation Options for Flats

M910 Co-Traying and Co-Sacking Packages of Automation and Presorted Mailings

[Revise the Summary to include the new option for preparing flat-size Bound Printed Matter, to read as follows:]

Summary

M910 describes the eligibility and preparation requirements for co-traying flat-size packages of automation rate and Presorted rate First-Class Mail. It also describes the eligibility and preparation requirements for co-sacking flat-size packages of nonletter-size automation rate and Presorted rate Periodicals, flat-size packages of automation rate and Presorted rate Standard Mail, and flat-size packages of Bound Printed Matter Presorted rate qualifying for the barcoded discount and Presorted rate (not qualifying for the barcoded discount).

* * * * *

[Add new 4.0, Bound Printed Matter, to provide preparation requirements for co-sacking flat-size BPM, to read as follows:]

4.0 BOUND PRINTED MATTER

4.1 Basic Standards

Effective June 1, 2003, mailers must co-sack packages of flat-size pieces from a Presorted mailing qualifying for the barcoded discount with packages of flat-size pieces from a Presorted rate mailing under the following conditions:

a. The Presorted pieces qualifying for the barcoded discount and the Presorted rate pieces are part of the same mailing job and are reported on the same postage statement.

b. The Presorted pieces qualifying for the barcoded discount must meet the criteria for flat-size mail under C050 and C820. Pieces in the Presorted rate mailing must meet the criteria for flat-size mail under C050.

c. The Presorted mailing qualifying for the barcoded discount must meet the eligibility criteria in E712, except that the sacking and documentation criteria in 4.1 and 4.4 must be met rather than the sacking and documentation criteria in M820.

d. The Presorted rate mailing must meet the eligibility criteria in E712, except that the sacking and documentation criteria in 4.1 and 4.4 must be met rather than the sacking and documentation criteria in M722.

e. The rates for pieces in the Presorted mailing qualifying for the barcoded discount are applied based on the number of pieces in the package, the level of package to which they are sorted under M722, and when applicable, the zone. The rates for pieces in the Presorted rate mailing are based on the number of pieces in the package, the level of sack in which they are placed under E712, and when applicable, the zone.

f. The pieces must be marked according to M012.

g. The packages prepared from the Presorted mailing qualifying for the barcoded discount and the packages prepared from the Presorted rate mailing must be sorted into the same sacks as described in 4.4.

h. A complete, signed postage statement(s), using the correct Postal Service form or an approved facsimile, must accompany each mailing job prepared under these procedures. Standardized documentation under P012 must also be submitted with each co-sacked mailing job and must describe for each sack sortation level, the number of pieces qualifying for the barcode discount, and the number of pieces that qualify for each applicable Presorted rate. i. Barcoded sack labels under M032 must be used to label the sacks.

4.2 Package Preparation

Except for mail prepared under the co-packaging option in 4.3, the Presorted mailing qualifying for the barcoded discount must be packaged and labeled under M820 and the Presorted rate mailing must be packaged and labeled under M722.

4.3 Optional Co-Packaging Preparation

As an option to the basic packaging requirements in 4.2, a mailer may co-package flat-size Presorted pieces qualifying for the barcoded discount and flat-size Presorted rate pieces, subject to M950.

4.4 Sack Preparation and Labeling

Packages of Presorted pieces qualifying for the barcoded discount and Presorted rate pieces prepared under 4.2 and 4.3 must be presorted together into sacks (co-sacked) using the following preparation sequence, sack size, and labeling:

a. 5-digit (required); minimum 20 addressed pieces; labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination of packages, preceded for military mail by correct prefix under M031.

(2) Line 2: ''PSVC FLTS 5D BC/NBC.''

b. 3-digit (required); minimum 20 addressed pieces; labeling:

(1) Line 1: L002, Column A.

(2) Line 2: ''PSVC FLTS 3D BC/NBC.''

c. SCF (required for each 3-digit ZIP Code served by the SCF of the origin (verification) office; optional for each 3-digit ZIP Code served by the SCF of an entry office other than the origin office); minimum 20 addressed; labeling:

(1) Line 1: L005.

(2) Line 2: ''PSVC FLTS SCF BC/NBC.''

d. ADC (required); minimum 20 addressed (use L004 to determine ZIP Codes served by each ADC); labeling:

(1) Line 1: L004.

(2) Line 2: ''PSVC FLTS ADC BC/NBC.''

e. Mixed ADC (required); no minimum; labeling:

(1) Line 1: L803. If entered by mailer at an ASF or BMC, L802.

(2) Line 2: ''PSVC FLTS BC/NBC WKG.''

* * * * *

M950 Co-Packaging Automation Rate and Presorted Rate Pieces Summary

[Revise the Summary to include the new option for preparing flat-size Bound Printed Matter, to read as follows:]

M950 describes the eligibility and preparation requirements for co-packaging flat-size automation rate and Presorted rate First-Class Mail, nonletter-size automation rate and Presorted rate Periodicals, flat-size automation rate and Presorted rate Standard Mail, and flat-size Presorted rate qualifying for the barcoded discount and Presorted rate (not qualifying for the barcoded discount) Bound Printed Matter.

* * * * *

[Add new 4.0, Bound Printed Matter, to provide co-packaging preparation requirements for flat-size BPM under M950, to read as follows:]

4.0 BOUND PRINTED MATTER

4.1 Basic Standards

Mailers may choose to co-package flat-size Presorted pieces qualifying for the barcoded discount and Presorted rate pieces as an option to the basic packaging requirements in M722 and M820, subject to the following conditions:

a. The pieces in the Presorted mailing qualifying for the barcoded discount and the pieces in the Presorted rate mailing must be part of the same mailing job and must be reported on the same postage statement.

b. The pieces in the mailing job must be flat-size and meet any other size and mailpiece design requirements applicable to the rate category for which they are prepared.

c. Mailings prepared in sacks must meet the basic standards in M910.

d. A minimum of 300 Presorted pieces qualifying for the barcoded discount and a minimum of 300 Presorted rate pieces are required. The total number of pieces qualifying for the barcoded discount and the total number of pieces qualifying for the Presorted rate must be used to meet the minimum volume requirements for packages and containers.

e. Presorted rate pieces must contain a 5-digit barcode and be co-packaged with Presorted pieces qualifying for the barcoded discount for the same presort destination. If this optional preparation method is used, all barcoded discount pieces and Presorted rate pieces in the same mailing job and reported on the same postage statement must be co-packaged.

f. All pieces must meet the AFSM 100 requirements described in C820.

g. Unless presented using an approved manifest mailing system under P910, mailers must sort Presorted pieces qualifying for the barcoded discount and Presorted rate pieces for each presort destination so that only one physical package for each logical presort destination includes both Presorted pieces qualifying for the barcoded

discount (containing a ZIP+4 or delivery point barcode) and Presorted rate pieces (containing a 5-digit barcode).

4.2 Package Preparation

Package size, preparation sequence, and labeling:

a. 5-digit (required); minimum 10 addressed pieces or 10 pounds, maximum package weight 20 pounds; red Label D or optional endorsement line (OEL).

b. 3-digit (required); minimum 10 addressed pieces or 10 pounds, maximum package weight 20 pounds; green Label 3 or OEL.

c. ADC (required); minimum 10 addressed pieces or 10 pounds, maximum package weight 20 pounds; pink Label A or OEL.

d. Mixed ADC (required); no minimum, maximum package weight 20 pounds; tan Label MXD or OEL.

R RATES AND FEES

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R700 Package Services

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2.0 BOUND PRINTED MATTER

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2.5 Destination Entry Rates—Flats

[Remove the last sentence and replace it with the following sentence:]

* * * Presorted flats weighing 20 ounces or less are not eligible for the DDU rate.

* * * * *

An appropriate amendment to 39 CFR 111 to reflect the changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–29340 Filed 11–18–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–138; KY–140; KY–141–200303(b); FRL–7408–9]

Approval and Promulgation of Implementation Plans for Kentucky: Approval of Revisions to the Jefferson County Portion of the Kentucky State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 19, 2002, June 16, 2002, and July 15, 2002, the Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) submitted revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP). The EPA is proposing to approve these revisions to the SIP. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, 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 rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before December 19, 2002.

ADDRESSES: All comments should be addressed to: Scott Martin, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the Commonwealth's submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382).

Air Pollution Control District of Jefferson County, 850 Barrett Avenue—Suite 200, Louisville, Kentucky 40204. (502/574–6000).

FOR FURTHER INFORMATION CONTACT: Scott Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9036. Mr. Martin can also be reached via electronic mail at *Martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: October 31, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–29180 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7410–1]

National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule amendments; reopening of public comment period.

SUMMARY: The EPA is announcing the reopening of the public comment period on the proposed amendments to the national emission standards for hazardous air pollutants (NESHAP) for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks. We originally requested comments on the proposed rule amendments by August 5, 2002 (67 FR 38809, June 5, 2002). We are reopening the comment period and extending the deadline for written comments to January 21, 2003, because pertinent information related to the proposed rule amendments was not submitted to the docket and thus not available for inspection prior to August 1, 2002.

DATES: *Comments.* Submit comments on or before January 21, 2003.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–88–02, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket Number A–88–02, Room Number Bl08, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section. Comments may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Comments submitted by e-mail must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in

WordPerfect file format. All comments and data submitted in electronic form must be identified by the docket number A–88–02. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Officer, C404–02, Attention: Mr. Phil Mulrine, U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. Information related to the proposed standards is available for inspection at the Air and Radiation Docket and Information Center, Docket No. A–88–02. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Room Number Bl08, Washington, DC 20460, telephone (202) 566–1742. The docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Mulrine, Metals Group, Emission Standards Division, C439–02, U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5289; facsimile number (919) 541–5450; electronic mail address *mulrine.phil@epa.gov.*

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: November 8, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–29334 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7409–3]

Georgia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Georgia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Georgia. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by December 19, 2002.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8440. You can examine copies of the materials submitted by Georgia during normal business hours at the following locations: EPA Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, Phone number: (404) 562–8190, Kathy Piselli, Librarian; or The Georgia Department of Natural Resources Environmental Protection Division, 205 Butler Street, Suite 1154, East, Atlanta Georgia 30334–4910, Phone number: 404–656–7802.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: August 12, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–29178 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2814; MB Docket No. 02–330, RM–10588; MB Docket No. 02–331, RM–10589]

Radio Broadcasting Services; Jasper, AR, and Milford, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comments on a petition filed by JEM Broadcasting Company, Inc. proposing the allotment of Channel 245A at Jasper, Arkansas, as the community's first local aural transmission service. Channel 245A can be allotted to Jasper in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 245A at Jasper are 36–00–29 North Latitude and 93–11–11 West Longitude. The Audio Division also requests comments on a petition filed by Larry Jackson proposing the allotment of Channel 288C2 at Milford, Utah, as the community's first local aural transmission service. Channel 288C2 can be allotted to Milford in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 288C2 at Milford are 38–23–49 North Latitude and 113–00–36 West Longitude.

DATES: Comments must be filed on or before December 16, 2002, and reply comments on or before December 31, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as

follows: JEM Broadcasting Company, Inc., c/o Elvis Moody, President, 101 Christian Lane, Bentonville, Arkansas 72712; and Larry Jackson, 7107 Bur Oak Ct. Apt. 1, Louisville, Kentucky 40291.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 02–330 and 02–331, adopted October 16, 2002, and released October 25, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Jasper, Channel 245A.

3. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Milford, Channel 288C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–29236 Filed 11–18–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[I.D. 111302C]

Endangered and Threatened Wildlife and Plants; 12–Month Finding on a Petition To List Bocaccio as Threatened

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

ACTION: Notification of petition finding and availability of a status review document.

SUMMARY: NMFS announces a 12–month finding on a petition to list the southern population of bocaccio (*Sebastes paucispinis*) as a threatened species and to designate critical habitat under the Endangered Species Act (ESA). Based on a review of the best scientific and commercial information on the status of the species, and on the recent actions adopted by the Pacific Fishery Management Council, NMFS finds that listing the southern population of bocaccio is not warranted at this time.

DATES: The finding announced in this document was made on November 14, 2002.

ADDRESSES: The bocaccio status review and accompanying stock assessment and rebuilding analysis are available electronically at the NMFS Web site at *http://www.nmfs.noaa.gov*. Paper copies of the status review and a list of references are available by submitting requests to Cathy Campbell, Protected Resources Division, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. The status review, along with the accompanying stock assessment and rebuilding analysis, are the basis for the following discussions, except where other references are noted.

FOR FURTHER INFORMATION CONTACT: Cathy Campbell, NMFS, Southwest Region, Protected Resources Division, (562) 980–4060 or David O'Brien, NMFS Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 2001, NMFS received a petition from the Natural Resources Defense Council, Center for Biological Diversity, and Center for Marine Conservation (now known as The Ocean Conservancy) to list the central/southern distinct population segment (DPS) of bocaccio (*Sebastes paucispinis*) or, in the alternative, to list bocaccio throughout its entire range as threatened under the ESA. The petition also requested that NMFS designate critical habitat for bocaccio. The petitioners contend that bocaccio have suffered precipitous population declines over the last several decades and that these population declines threaten bocaccio with extinction and compromise its ability to recover. The petitioners identified overutilization, specifically the direct and indirect harvest of bocaccio in groundfish fisheries, as the primary cause of bocaccio's decline. The petitioners identified other factors contributing to the status of bocaccio including inadequate regulatory mechanisms and habitat modification due to the effects of bottom trawling gear, pollution of nearshore juvenile habitat, and shifts in oceanographic conditions.

In reviewing the petition, NMFS also reviewed stock assessments, fishery independent and dependent data and other reports prepared prior to and from the time that bocaccio and other Pacific rockfish species came under Federal management. On June 14, 2001, NMFS published its determination (66 FR 32304) that the petition presented substantial scientific and commercial information indicating that listing may be warranted, and announced the initiation of a formal status review as required by section 4(b)(3)(A) of the ESA. To ensure a comprehensive review, NMFS concurrently solicited additional information and comment from the public on historical abundance, current abundance, factors contributing to population declines, sources of mortality, habitat use, habitat condition, factors affecting habitat condition, and distinctness of the southern population. In addition, NMFS solicited information regarding the adequacy of bocaccio conservation efforts and on areas that may qualify for critical habitat for bocaccio.

In response to the 90–day petition finding, NMFS received one public comment. The comment focused on the inadequacy of existing regulatory measures and, in particular, the underestimate of discards of bocaccio and the authorization of continued overfishing.

NMFS Southwest Fisheries Science Center staff prepared a comprehensive status review for the southern stock of bocaccio. This document summarizes the results of the status review. Copies of the status review are available on the internet or upon request (see **ADDRESSES**).

Life History

Bocaccio is a common rockfish, belonging to the genus Sebastes. Bocaccio are found in coastal waters of the Pacific Ocean, ranging from Baja California, Mexico to Alaska. Adults have been found at depths of 40–1578 ft. (12–481 m), but are most abundant at 165–825 ft. (50–251 m). Adults are often found in association with rocky areas. Larvae and small juveniles are pelagic and are commonly found in the upper 300 ft. (91 m) of the water column.

Bocaccio generally copulate in the late summer to early fall, and females bear their young live in the winter months. Off California, some bocaccio produce multiple broods in one season (Moser 1967). Larvae and early juveniles are pelagic until early June, when they move toward the shore and settle to the bottom where they develop as juveniles. Juvenile bocaccio (age 3 to 6 months) sometimes form dense schools in the nearshore area and are often found under drifting kelp mats.

Juvenile bocaccio grow rapidly, but typically take five years to mature. Based on the oldest fish that have been seen, bocaccio may live up to 40 years. The mean generation time (the average time required for offspring to replace the parents) is 12 years.

Bocaccio eat a variety of fish. Bocaccio are prey to larger organisms, including marine mammals, and juvenile bocaccio can at times provide a significant component of seabird diets.

Bocaccio recruitment (the addition of young fish to a population) is highly variable. Successful reproduction, where production of offspring offsets natural loss of adults, has occurred in only 26 percent of years. No large recruitments have occurred since 1978. Because of this highly variable recruitment pattern, abundance naturally fluctuates greatly.

Consideration as a ''Species'' Under the ESA

The ESA defines species as ''any subspecies of fish or wildlife or plants and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature.'' This definition allows for the recognition of distinct population segments at levels below taxonomically recognized species or subspecies. On February 7, 1996, the U.S. Fish and Wildlife (FWS) and NMFS adopted a joint policy to clarify their interpretation of the phrase ''distinct population segment (DPS)'' for the purposes of listing, delisting, and reclassifying species under the ESA (61 FR 4722). The joint policy identifies two criteria that must be met for a population segment to be considered a DPS under the ESA: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

Discreteness

According to the joint policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

Bocaccio are geographically separated into northern and southern populations divided by an area of scarcity off of Northern California and southern Oregon. Genetic analysis of the northern and southern populations indicates that there is a 90 percent probability that they are genetically distinct from each other. Thus, these segments can be considered discrete segments under the DPS policy.

The southern bocaccio segment extends into Mexican waters, where regulatory mechanisms differ from those in the United States. As a result, the Mexican portion of bocaccio's range could be considered discrete and, if also found to be ''significant,'' it could be a DPS. However, as stated below, the Mexican population of bocaccio is not considered significant and therefore not a separate DPS, but a component of the southern DPS.

Significance

The DPS policy identifies several factors that may be considered in determining the significance of a discrete population segment to the taxon to which it belongs. These considerations include, but are not limited to: (1) persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the DPS would result in a significant gap in the range of a taxon; (3) evidence that the DPS represents the only surviving natural occurrence of a taxon; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

As noted above, genetic analysis indicates that there is a 90–percent probability that the northern and southern population segments are genetically distinct. In addition, the loss of either population segment would result in a significant gap in the range of the taxon. As a result, both the northern and southern population segments would be considered significant under the DPS policy.

A rough estimate indicates that approximately 10 percent of total bocaccio abundance occurs in Mexican waters. Thus, despite the fact that regulatory mechanisms and bocaccio catches in Mexico could influence the conservation status of bocaccio in the United States, that influence is presumably small given the relative sizes of the stock segments. As a result, the portion of the southern bocaccio range in Mexican waters is not significant and is not considered a separate DPS, but a part of the southern population.

The northern and southern bocaccio population segments are both the discrete and significant as defined in the joint DPS policy. Thus, NMFS is recognizing a northern DPS and a southern DPS for bocaccio. This is consistent with the current NMFS and Council management of bocaccio, which recognize two separate West coast bocaccio populations. The remainder of this document will primarily address the southern stock as a DPS, since this was the subject of the petition.

Abundance

The current abundance of the southern bocaccio stock is estimated to be 3000 metric tons (mt) or approximately 1.6 million fish (of age 1 and older).

Spawning potential or output, which is the number of spawn that the population is capable of producing, is used as a measure of abundance for bocaccio. This measure accounts for both numerical abundance and the effects of age structure and maturation, where older individuals are disproportionally more fecund. The current spawning output of the stock is 720 billion eggs, and the estimated spawning output in the absence of fishing is 19,849 billion eggs (coefficient of variation (CV) of 31 percent). Thus, the current spawning output is 3.6

percent of the estimated unfished abundance.

The abundance of bocaccio naturally fluctuates greatly, due to rare, large recruitment events. Between 1951 and 1969, abundance fluctuated between 26 percent (in 1960–61) and 95 percent (1969) of the estimated average unfished level. Since 1969, there has been a gradual decline in abundance to its current level of 3.6 percent of estimated unfished abundance.

Fishery Management

Bocaccio have been an important component of commercial and recreational catches off California for several decades. The estimated catch of bocaccio in 1950 was approximately 5000 mt. Landings of bocaccio in California gradually increased over the next 20 years, reaching a maximum annual harvest level of almost 12,000 mt in the mid–1970s.

In 1982, the Pacific Fishery Management Council (Council) completed its fishery management plan (FMP) for west coast groundfish, including bocaccio. The Council is one of eight regional fishery management councils established by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to prepare fishery management plans for U.S. fisheries in need of federal management. The Council's area of responsibility covers fisheries off California, Oregon, and Washington.

During the early 1980's, under the FMP, the allowable annual harvest of bocaccio was approximately 6,000 mt. After a 1990 bocaccio stock assessment showed a decline, NMFS established a harvest guideline of 1,100 mt for 1991–1992. During these two years, actual harvest exceeded the harvest guideline by 300–500 mt.

NMFS increased the allowable catch of bocaccio to 1,540 mt in 1992 and to 1,700 mt in 1995. Actual landings during the mid–1990's were significantly less than the allowable catch, however, with 864 mt and 599 mt harvested in 1995 and 1996 respectively. A 1996 stock assessment then indicated that bocaccio were in severe decline, which could account for the low harvests in 1995 and 1996.

Until the mid–1990s, NMFS believed that bocaccio were capable of withstanding an exploitation rate that was commonly applied in fisheries worldwide. This fishing rate of F(0.35; read as ''F–35 percent'') reduces the expected average lifetime reproductive output of a fish to 35 percent of the output it would achieve under natural unfished conditions. Recognizing that rockfish stocks were continuing to decline at this exploitation level, NMFS recommended the more conservative rockfish harvest policy of F(0.40) in 1998 and adopted an allowable catch of 230 mt for 1998 and 1999.

In 1999, the bocaccio resource was formally declared overfished by the Secretary of Commerce, in accordance with the Magnuson-Stevens Act. Following this declaration, NMFS adopted a rebuilding policy based on the 1999 stock assessment and a rebuilding analysis (MacCall, 1999). The rebuilding analysis indicated that rebuilding of bocaccio would take 37 years if the annual harvest was limited to 100 mt. NMFS set the optimum yield (OY) at 100 mt for 2000–2002 and, in 2001, adopted a more conservative rockfish harvest policy of F(0.50). The actual levels of harvest in 2000 and 2001 exceeded the OY, with 233 mt taken in 2000 and 214 mt taken in 2001. In response to indications that the harvest levels for 2002 were nearing the OY level too early in the year, NMFS implemented additional fishery restrictions in July 2002 to minimize further 2002 catch of bocaccio.

A new 2002 stock assessment confirmed that the southern stock was in severe decline. The Council reviewed the accompanying rebuilding analysis at its September 2002 meeting and has proposed an even lower fishing rate which would allow a harvest of not more than 20 mt in 2003. Based on the rebuilding analysis, this harvest rate would provide an 80–percent probability that the stock would not decline in 100 years.

In establishing the harvest levels for 2002 and 2003, the Council incorporated new information available on the bycatch rates of bocaccio in the commercial trawl fishery. As a result of recent litigation, NMFS and the Council reviewed historic bycatch rates and discard assumptions and re-evaluated their approach to estimating discards in the trawl fishery. The result was a model developed by Hastie (Hastie, 2001) that estimates the co-occurrence rate of overfished groundfish species, including bocaccio, relative to the landings of key target groundfish species. Using this model, the Council was able to estimate the level of discards of bocaccio that can be expected for a given groundfish harvest in the trawl fishery. This model enables the Council to fully evaluate the impacts of management measures and protects against the adoption of management measures that may increase the level of bocaccio bycatch.

Summary of Factors Affecting the Species

The ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' A threatened species is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Under section 4(a)(1) of the ESA, a species can be determined to be endangered or threatened due to one or more of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by any state or nation to protect such species. These factors and their application to the southern stock of bocaccio are described below.

(1) The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Adult bocaccio are primarily found in rocky habitat. This habitat has likely been degraded by large commercial trawling operations, but there is little information regarding the level of habitat loss. Since this type of trawling has now been excluded from primary bocaccio habitat, it is expected that the future threats to rocky bottom habitat are minimal.

Little information is available on the habitat requirements of juvenile bocaccio. While kelp and eelgrass are utilized by larvae and juvenile bocaccio, there is no information to indicate that this habitat is critical to the survival of bocaccio or that any reduction in kelp or eelgrass has had a significant impact on bocaccio.

Bocaccio have not been observed to have any significant reduction in their range.

(2) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Bocaccio have been overutilize for the last several decades. A combination of overutilization and poor recruitment have resulted in a severe decline of the southern bocaccio stock to 3.6 percent of their estimated pre-exploitation level.

Although historical overutilization has been the primary cause of bocaccio's decline, recent conservation measures have drastically reduced fishing effort in times and areas where bocaccio occur and are expected to allow the stock to recover. As a result, under new management measures, overutilization is not expected to place the bocaccio stock at risk of becoming endangered in the foreseeable future. See further discussion under ''Conservation Factors'' below.

(3) Disease or Predation

Bocaccio are prey to larger organisms, including marine mammals, and juvenile bocaccio can at times provide a significant component of seabird diets. This predation is not considered significant and is not likely to threaten the survival of the stock. There are no known threats of disease for bocaccio.

(4) The Inadequacy of Existing Regulatory Mechanisms

Previous fishery management measures have been inadequate to protect bocaccio, and the southern stock of bocaccio has been heavily overutilized during the entire period of Council management. However the Council has taken strict measures over the past few years to promote bocaccio recovery, and NMFS believes that the Council's most recent proposed measures, adopted in September 2002, will ensure that the southern stock of bocaccio will not become endangered within the foreseeable future. See further discussion under ''Conservation Factors'' below.

(5) Other Natural or Manmade Factors Affecting its Continued Existence

Long-term ocean climate patterns appear to have a strong influence on the frequency of large recruitments of southern bocaccio. The protracted and extremely warm ocean conditions of the 1990s was associated with poor reproduction of most rockfish species, including bocaccio, and undoubtedly contributed to the decline in abundance. Although this relationship cannot yet be quantified, the cooler ocean since 1998 is similar to the cool conditions of the 1960s and early 70s, and may be associated with better bocaccio recruitment. Although the specific impacts are uncertain, it is probable that ocean-climate patterns will continue to affect the recruitment of bocaccio.

Juvenile bocaccio have been documented in the intake of power plants along the California coast. In fact, power plant intakes have provided useful indices of rockfish recruitment. However, the level of mortality of juvenile bocaccio from power plant intake is very low and is not expected to impact the survival of bocaccio.

Conservation Factors

Previous fishery management measures have been inadequate to protect bocaccio, and the southern stock of bocaccio has been heavily overutilized during the entire period of Federal management. However, NMFS has adopted increasingly more restrictive measures over the past few years to promote bocaccio recovery, and NMFS believes that the Council's most recent proposed measures, adopted in September 2002, will ensure that the southern stock of bocaccio will not become endangered within the foreseeable future.

In 1999, the bocaccio resource was formally declared overfished. The 1999 NMFS bocaccio stock assessment and rebuilding analysis indicated a rebuilding time of 37 years, based on a harvest rate of 100 mt per year. Based on this stock assessment, NMFS adopted a rebuilding policy in 2000 that set the catch at 100 mt for 2000–2002. This rebuilding policy was strongly influenced by the assumed strength of the 1999 yearclass, based on unusually high intake levels at certain power plants. The 100–mt harvest rate was a significant restriction from previous catch limits, which were as high as 1,700 mt in 1996. During the first 2 years of implementation of the 100 mt catch limit, the Council struggled to track catches on a real-time basis so it could recommend effective means to restrict the catch of bocaccio, which co-occur with many other species. This was not possible, however, and the catch limit of 100 mt was exceeded in both 2000 and 2001. In 2002, the Council closely monitored catch rates and recommended that NMFS implement mid-year closures and restrictions when the mid-year catch level indicated that the 100 mt limit was likely to be exceeded. As a result of NMFS mid-year actions in 2002, the bocaccio catch for 2002 will be near or below the 100 mt catch limit.

In June 2002, NMFS prepared a revised stock assessment that indicated that the 1999 stock assessment and accompanying rebuilding analysis were overly optimistic because the 1999 bocaccio yearclass was not as strong as initially estimated. This analysis showed that the stock continued to be in severe decline and indicated that more restrictive measures would be necessary to ensure both the survival and rebuilding of the southern stock of bocaccio. NMFS further refined this analysis and prepared a rebuilding analysis in August 2002, which modeled the probable outcomes for bocaccio at 25 and 100 years at varying levels of harvest. Based on this analysis, NMFS recommended to the Council that the annual harvest of bocaccio be reduced to as close to zero as possible, but not to exceed 20 mt.

Bocaccio Rebuilding Policy and Measures for 2003

At its September 2002 meeting, the Council considered the August rebuilding analysis and adopted a catch rate (catch/total biomass) which would allow a catch of up to 20 mt in 2003. Based on the rebuilding analysis, this catch rate would provide an 80 percent probability that the stock would not decline in 100 years. Under this rebuilding policy, allowable catch rates are very low. The catch rate for 2003 is 0.5 percent, compared with an average catch rate of 11 percent during the preceding 50 years. Under this rebuilding analysis, rebuilding is expected to take a median time of 170 years at this harvest level.

The Council recommended that NMFS implement several management measures for 2003 in order to limit the catch for 2003. The Council has proposed that all directed fishing for bocaccio be eliminated in 2003 and that the catch rate of 20 mt would be used to account for discards of bocaccio incidentally taken in fisheries for co-occurring species. The Council recommended new depth-based management measures that would prohibit bottom trawl, limited entry fixed gear, and open access fishing in the times and areas where bocaccio are expected to occur. In addition, the Council proposed that no retention of bocaccio be allowed in the commercial fisheries. In addition, recreational fisheries south of Cape Mendocino (40° 10′ N.) would be closed from January through June and open shoreward of 20 fathoms from July though December.

The State of California has worked closely with the Council in developing measures to reduce bocaccio bycatch. In fact, the depth-based restrictions recently adopted by the Council were originally developed by the state. The state has recently adopted several conservation measures to provide additional protection for bocaccio. The state implemented regulations in 2002 that prohibit the retention of bocaccio in the recreational fishery. For 2003, the recreational season for all rockfish was reduced to six months and a new groundfish bag limit was created which will reduce the overall take of rockfish, including bocaccio. The state recently adopted a regulation that will require

that observers be carried on California vessels, if requested by the State. The state recently adopted a network of reserves around the Channel Islands, which will provide protection for important bocaccio habitat. In addition, the Council has adopted a plan that, when implemented, will reduce the size of the nearshore fishery and is considering a number of options for significantly restricting or eliminating the spot prawn trawl fishery for 2003. Further, a rockfish closure intended to protect cowcod in a large area off southern California will also provide substantial protection for bocaccio.

With this combination of Federal and state management measures, the Council estimates that the bycatch of bocaccio (meaning the total harvest of bocaccio) in 2003 will be 10.3 mt. The Council plans to closely monitor harvest throughout 2003 and would implement additional mid-year management measures if necessary to ensure that the 20–mt harvest level is not exceeded. In order to evaluate the harvest levels of bocaccio in 2003, the Council will consider the results of the trawl bycatch model, information from the NMFS Marine Recreational Fisheries Statistical Survey (MRFSS), and logbook and other data. Modifications being made in the MRFSS program are also expected to result in faster availability of higher quality data in recreational catches of bocaccio. In addition, in early 2003, the initial results from the NMFS Groundfish Observer Program will be available for NMFS and Council review. The observer program has monitored both the limited entry and open access components of the commercial groundfish fishery since August 2001. Preliminary results of the observer program will be available early in 2003 and will be used to further refine the Hastie bycatch model (Hastie 2001).

NMFS has prepared emergency regulations to implement the Federal management measures discussed above. These emergency regulations will be in effect by January 1, 2003, and will remain effective for 60 days. Concurrently, NMFS will be issuing a proposed rule to implement these measures for the remainder of 2003 and soliciting public comment on these measures.

Future Harvest Levels

The Council's current rebuilding policy is based on the 2000 rebuilding analysis which indicated that it will take 170 years to rebuild the bocaccio stock, with the recently adopted catch rate (which is 20 mt for 2003). According to the National Standard Guidelines (Guidelines), NMFS' regulations that implement the Magnuson-Stevens Act, the maximum length of time to rebuild an overfished species is the time to rebuild in the absence of fishing, plus one generation time. For bocaccio, the maximum time to rebuild is 106 years. Therefore, the Council must adopt a rebuilding plan that will have at least a 50–percent probability of rebuilding bocaccio within 106 years. Given the current abundance of bocaccio, and their natural tendency for rare, large recruitment events, analyses indicate that, even in the absence of fishing, the southern stock of bocaccio would not have a 50–percent probability of recovering within 106 years. Since the Guidelines do not address the unique situation in which rebuilding a species in the maximum time allowed is not possible, NMFS reviewed the Magnuson-Stevens Act and has determined that the Council's recommended level of bocaccio harvest (20 mt) meets its standards for rebuilding overfished stocks. Although the Council has not yet adopted a revised rebuilding plan for bocaccio, NMFS expects that the rebuilding plan will maintain the catch rate adopted for 2003, since this would be necessary in order to meet the rebuilding requirements under the MSA given bocaccio's current status.

Determination

After reviewing the best scientific and commercial information available and considering the expected effects of conservation measures, NMFS has determined that listing the southern DPS of bocaccio is not warranted at this time. While NMFS recognizes that the southern stock of bocaccio has severely declined over the past several decades, NMFS believes that the catch rate of 0.5 percent (20 mt in 2003) recently adopted by the Council will prevent bocaccio from becoming endangered within the foreseeable future. NMFS will retain bocaccio on the Candidate Species list and closely monitor the status of the bocaccio population and future Council measures. If necessary, NMFS will re-evaluate its decision regarding whether the southern stock of bocaccio warrants listing under the ESA, including evaluating whether emergency listing is warranted and whether an additional status review is necessary. Reasons for a re-evaluation include, but are not limited to: (1) if future Council decisions allow for increased exploitation rate; or (2) if future data or analysis indicate that conservation efforts are inadequate.

References

A list of references is available upon request (see **ADDRESSES**).

Authority

The authority for this section is the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 13, 2002.

Rebecca Lent,

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

[FR Doc. 02–29356 Filed 11–15–02; 9:16 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 021108270–2270–01; I.D. 102802C]

RIN 0648–AQ53

Endangered and Threatened Species; Finding for a Petition To Revise Critical Habitat for Northern Right Whales

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

ACTION: Notice of 90–day finding.

SUMMARY: NMFS announces the receipt of a petition to revise critical habitat for the endangered western North Atlantic right whales, *Eubalaena glacialis*, (right whales). NMFS finds that the petition presents substantial scientific information indicating that this action may be warranted and is soliciting public comment and information on the petition. NMFS will determine how to proceed with the petitioned action within 12 months after receiving the petition.

DATES: Comments on this action must be postmarked or transmitted by facsimile by January 21, 2003. Comments transmitted via e-mail or the Internet will not be accepted.

ADDRESSES: Comments concerning this action may be submitted to Mary Colligan, Assistant Regional Administrator for Protected Resources, Protected Resources Division, NMFS, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Mary Colligan, Northeast Region, telephone 978–281–9116, fax 978–281–9394; Kathy Wang, Southeast Region, telephone 727–570–5312, fax 727–570–

5517; or Patricia Lawson, telephone 301–713–2322, fax 301–713–0376.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2002, NMFS received a petition dated July 9, 2002, from The Ocean Conservancy requesting that NMFS revise and expand the current critical habitat designation for right whales. The petitioner requested that NMFS expand the existing Southeast critical habitat designation to the following coordinates: 31° 30′ N to 29 40′ N from the shoreline out to 30 nautical miles (55.6 km2); 29° 4′' N to 28 °00′ N from the shoreline out to 10 nautical miles (18.5 km^2). The petitioned area would add approximately 2,700 nm^2 (5,003.6 km^2) to the current critical habitat coverage. The petitioner also requested that NMFS expand and combine both the existing Northeast critical habitat designations (Cape Cod Bay and Great South Channel) into one critical habitat area bounded by the following coordinates: 41° 41.2′N/69° 58.2′ W; 41° 00.0′ N/69° 05.0′ W; 41° 00.0′ N/68° 13.0′ W; 42° 12.0′ N/68° 13.0′ W; 42° 12.0′ N/70° 30.0′ W; 41° 46.8′ N/70° 30.0′ W; and on the southwest corner by the shoreline of Cape Cod, MA.

Section 4(b)(3)(D) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1533(b)(3)(D)), requires that NMFS make a finding on whether a petition to revise a designation of critical habitat presents substantial scientific information to demonstrate that the petitioned action may be warranted. NMFS' ESA implementing regulations at 50 CFR 424.14 define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In making this finding, NMFS must consider the information that is presented by the petitioner and any new unassessed information on habitat that was added to NMFS' file regarding the species after critical habitat was designated but before NMFS received the petition to revise it. To the maximum extent practicable, this finding is to be made within 90 days of the petition, and the finding is to be published promptly in the **Federal Register**. Within 12 months after receiving a petition that NMFS has found to present substantial information indicating that the revision may be warranted, NMFS must determine how it intends to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register**.

Critical habitat is defined in section 3(5)(A) of the ESA as (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation is defined in section 3 of the ESA as ''... the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary.''

In determining what areas are critical habitat, NMFS must consider the physical and biological features that are essential to the conservation of the species and that may require special management considerations. Physical and biological features essential to the conservation of the species include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

Special management considerations or protections mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of the listed species (50 CFR 424.02(j)).

Section 4(b)(2) of the ESA requires NMFS to take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. NMFS may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

The right whale was listed as endangered under the Endangered Species Conservation Act, the precursor to the ESA, on June 2, 1970 (35 FR 8495; codified at 50 CFR 17.11). NMFS was petitioned by the Right Whale Recovery Team to designate critical habitat for right whales on May 18, 1990. A document was published in the **Federal Register** on July 12, 1990 (55 FR 28670), requesting information and comments on the petition. The proposed rule was published on May 19, 1993 (58 FR 29186), and the final rule was published on June 3, 1994, (59 FR 28793; codified at 50 CFR 226.203). The designation identified habitat with features essential to the conservation of the species, such as foraging, calving, and nursing. Specifically, this designation includes portions of Cape Cod Bay and Stellwagen Bank, the Great South Channel (each off the coast of Massachusetts), and waters adjacent to the coasts of Georgia and the east coast of Florida.

In general, the petitioner stated that since the 1994 designation of right whale critical habitat, knowledge regarding distribution and mortality of the North Atlantic right whale has increased substantially, indicating that critical habitat boundaries need to be revised and expanded to provide proper protection for right whales.

Specifically, the petitioner stated that 10 years of new data regarding right whale distribution and causes of mortality along the east coast of the United States show that the current critical habitat designation is not sufficient to protect right whales from further anthropogenic mortality. The petitioner stated that the proposed critical habitat expansion contains several features essential to the conservation of the right whale in the western North Atlantic and proposed that these features require specific protection or management considerations to ensure the survival and recovery of the species. The petitioner stated that the areas proposed for expanded critical habitat experience high levels of human disturbance in the form of shipping activities, fisheries, military activities, dredging operations, increased pollution, and general habitat disturbance. The essential features associated with the proposed critical habitat cited by the petitioner include the following: space for individual and population growth and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of species.

The petitioner acknowledged that some areas in the northeastern U.S. have already received special management attention in the form of fishing regulations, but maintains that essential right whale habitat along the eastern seaboard lacks protection from ship strikes. In addition, the petitioner noted that when several habitats, each satisfying the requirements for

designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat. The petitioner stated that the continued high mortality of North Atlantic right whales from ship strikes indicates the immediate need for management actions to reduce ship strikes and maintains that accurately designated critical habitat boundaries will facilitate the management process. In addition, the petitioner stated that since the time critical habitat was originally designated in the southeastern U.S., extensive and expansive survey efforts have shown that right whales occur further offshore than originally known. The petitioner contended that the importance of this area as the only known calving ground for right whales warrants the revision of critical habitat to protect the animals within this region.

Petition Finding

NMFS has reviewed the petition and other available information. On the basis of that information, NMFS finds that the petition presents substantial scientific information indicating that the requested action may be warranted. Within 1 year of the receipt of the petition, NMFS will determine how it intends to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register**.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: November 13, 2002.

Rebecca Lent,

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

[FR Doc. 02–29360 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 223

Tuesday, November 19, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–074–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection activity in support of regulations requiring the certification of facilities for the treatment of fruits, vegetables, and other articles. The certification of treatment facilities is necessary to ensure that the facilities are capable of performing treatments required under our regulations to prevent the introduction or dissemination of plant pests and noxious weeds into or within the United States.

DATES: We will consider all comments that we receive on or before January 21, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–074–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–074–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–074–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on the certification of treatment facilities, contact Mr. Jim Smith, Director, Port Operations, PPQ, APHIS, 4700 River Road Unit 60, MD 20737–1236; (301) 734–8295. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Certification of Treatment Facilities.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for, among other things, preventing plant pests and noxious weeds from entering the United States and controlling and eradicating plant pests and noxious weeds in the United States. The Plant Protection Act authorizes the Department to carry out this mission. The Plant Protection and Quarantine program of USDA's Animal and Plant Health Inspection Service (APHIS) is responsible for implementing the regulations promulgated under the Act.

To carry out this mission, APHIS administers regulations intended, among other things, to prevent the introduction or dissemination of plant pests and noxious weeds into or within the United States. These regulations are contained in title 7, chapter III, of the Code of Federal Regulations (CFR).

Under the regulations, certain articles such as fruits, vegetables, and seeds must be treated to be eligible for entry into the United States or interstate movement within the United States. In some cases, treatments are performed in facilities in foreign countries; in other cases, treatments are performed aboard ship while the articles are in transit; and in still other cases, treatments are performed in facilities in the United States. All facilities that provide treatments required under our regulations, including refrigeration compartments on ships, must be certified by APHIS before they can provide those treatments.

Facilities wishing to be certified must supply APHIS with specifications, which may include plans, blueprints, drawings, or other information. Specific requirements for the certification of facilities are contained in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at 7 CFR 300.1. We need this information to determine whether a facility can provide the treatments required for quarantine security.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for certification of facilities for the treatment of fruits, vegetables, and other articles.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.25 hours per response.

Respondents: U.S. shippers, importers, State and Plant Health

Protection authorities, owners and operators of facilities that perform quarantine treatments.

Estimated annual number of respondents: 250.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 250.

Estimated total annual burden on respondents: 312.5 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 13th day of November, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–29303 Filed 11–18–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Public Hearing on New Entrant's 2003-Crop Cane Sugar Marketing Allocation

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of opportunity to request a public hearing.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this notice to advise sugarcane processors and growers that they may request a public hearing as a result of an application made by a new sugarcane processor, the Arizona Sugar Factory, L.L.C., for a cane-sugar allocation for the 2003 crop year.

DATES: CCC will conduct a hearing if one is requested by December 4, 2002. CCC will publicly announce details of the hearing if one is requested.

ADDRESSES: Please send hearing requests to Thomas Bickerton, Farm Service Agency, United States Department of Agriculture (USDA), Stop 0516, 1400 Independence Ave, SW., Washington, DC 20250–0540. Phone: (202) 720–6733. Fax: (202) 690–1480. e-mail: *sugar@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Bickerton at (202) 720–6733.

SUPPLEMENTARY INFORMATION: The Arizona Sugar Factory, L.L.C., a new entrant, is requesting a 2003-crop year allocation of 10,000 short tons, raw value, and wants its allocation to increase to 50,000 short tons, raw value, for the 2005 crop. The new processor will be located in California, a mainland State which does not currently have a cane allotment. Section 359d(b)(1)(E) of the Agricultural Adjustment Act of 1938, as amended, authorizes CCC to provide a sugarcane processor, who begins processing after May 13, 2002, with an allocation that provides a fair, efficient, and equitable distribution of the allocations from the allotment for the State in which the processor is located. CCC would have to allot California a share of the overall cane allotment in order to accommodate the new entrant's allocation. The new California allotment would be subtracted, on a pro rata basis, from the allotments otherwise provided to each mainland State.

Signed in Washington, DC, on November 8, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–29304 Filed 11–18–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions Under 36 CFR Part 217 and Corrections Under 36 CFR Part 215 for the Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice and correction.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those known to be interested in or affected by a specific decision. The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published on June 6, 2002, of principal newspapers to be utilized for publishing notice of proposed actions and of decisions subject to appeal under 36 CFR part 215. The list of newspapers to be used for 215 notice and decision is corrected.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR part 217 and the use of the corrected newspaper listed under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Elaine Cloward, Acting Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW, Atlanta, Georgia 30309, Phone: 404–347–2788.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspapers which are listed by Forest Service Administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notice of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper. The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in more than one state of the 14 states of the Southern Region and the Commonwealth of Puerto Rico *Atlanta Journal,* published daily in Atlanta, GA.

Affecting National Forest System lands in only one state of the 14 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the principal newspaper elected by the National Forest of that state or Ranger District.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Montgomery Advertiser, published daily in Montgomery, AL.

District Ranger Decisions

Bankhead Ranger District: Northwest Alabamian, published bi-weekly (Wednesday & Saturday) in Haleyville, AL.

Conecuh Ranger District: The Andalusia Star News, published daily (Tuesday through Saturday) in Andalusia, AL.

Oakmulgee Ranger District: The Tuscaloosa News, published daily in Tuscaloosa, AL.
Shoal Creek Ranger District: The Anniston Star, published daily in Anniston, AL.
Talladega Ranger District: The Daily Home, published daily in Talladega, AL.
Tuskegee Ranger District: Tuskegee News, published weekly (Thursday) in Tuskegee, AL.

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR
San Juan Star, published daily in English in San Juan, PR

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA

District Supervisor Decisions

Armuchee Ranger District: Walker County Messenger, published bi-weekly (Wednesday and Friday) in LaFayette, GA
Toccoa Ranger District: The News Observer (primary) published by-weekly (Tuesday & Friday) in Blue Ridge, GA
The Dahlonega Nuggett, (additional) published weekly (Wednesday) in Dahlonega, GA
Brasstown Ranger District: North Georgia News, (Primary) published weekly (Wednesday) in Blairsville, GA
Towns County Herald, (additional) published weekly (Thursday) in Hiawassee, GA
The Dahlonega Nuggett, (additional) published weekly (Wednesday) in Dahlonega, GA
Tallulah Ranger District: Clayton Tribune, published weekly (Thursday) in Clayton, GA
Chattooga Ranger District: Northeast Georgian, (primary) published bi-weekly (Tuesday & Friday) in Cornelia, GA
Chieftain & Toccoa Record, (additional) published bi-weekly (Tuesday & Friday) in Toccoa, GA
White County News Telegraph, (additional) published weekly (Thursday) in Cleveland, GA
The Dahlonega Nuggett, (additional) published weekly (Thursday) in Dahlonega, GA
Cohutta Ranger District: Chatsworth Times, published weekly (Wednesday) in Chatsworth, GA
Oconee Ranger District: Eatonton Messenger, published weekly (Thursday) in Eatonton, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN

District Supervisor Decisions

Ocoee-Hiwassee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN
Tellico Ranger District: Monroe County Advocate, published tri-weekly (Wednesday, Friday, and Sunday) in Sweetwater, TN
Nolichucky-Unaka Ranger District: Greeneville Sun, published daily (except Sunday) in Greeneville, TN
Watauga Ranger District: Johnson City Press, published daily in Johnson City, TN

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY

District Supervisor Decisions

Morehead Ranger District: Morehead News, published bi-weekly (Tuesday and Friday) in Morehead, KY
Stanton Ranger District: The Clay City Times, published weekly (Thursday) in Stanton, KY
London Ranger District: The Sentinel-Echo, published tri-weekly (Monday, Wednesday, and Friday) in London, KY
Somerset Ranger District: Commonwealth-Journal, published daily (Sunday through Friday) in Somerset, KY
Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY
Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL

District Supervisor Decisions

Apalachicola Ranger District: Calhoun-Liberty Journal, published weekly (Wednesday) in Bristol, FL
Lake George Ranger District: The Ocala Star Banner, published daily in Ocala, FL
Osceloa Ranger District: The Lake City Reporter, published daily (Monday-Saturday) in Lake City, FL
Seminole Range District: The Daily Commercial, published daily in Leesburg, FL
Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC

District Ranger Decisions

Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC
Andrew Pickens Ranger District: The Daily Journal, published daily in Seneca, SC
Long Cane Ranger District: The Augusta Chronicle, published daily in Augusta, GA
Wambaw Ranger District: Post and Courier, published daily in Charleston, SC
Witherbee Ranger District: Post and Courier, published daily in Charleston, SC

George Washington and Jefferson National Forests, Virginia and West Virginia

Forest Supervisor Decisions

Roanoke Times, published daily in Roanoke, VA

District Ranger Decisions:

Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA
Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA
James River Ranger District: Virginian Review, published daily (except Sunday) in Covington, VA
Deerfield Ranger District: Daily News Leader, published daily in Staunton, VA
Dry River Ranger District: Daily News Record, published daily (except Sunday) in Harrisonburg, VA
New River Ranger District: Roanoke Times, published daily in Roanoke, VA
Glenwood/Pedlar Ranger District: Roanoke Times, published daily in Roanoke, VA
New Castle Ranger District: Roanoke Times, published daily in Roanoke, VA
Mount Rogers National Recreation Area: Bristol Herald Courier, published daily in Bristol, VA
Clinch Ranger District: Kingsport-Times News, published daily in Kingsport, TN

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

The Town Talk, published daily in Alexandria, LA

District Ranger Decisions

Caney Ranger District: Minden Press Herald, (primary) published daily in Minden, LA
Homer Guardian Journal, (additional) published weekly (Wednesday) in Homer, LA
Catahoula Ranger District: The Town Talk, published daily in Alexandria, LA
Calcasieu Ranger District: The Town Talk, (primary) published daily in Alexandria, LA
The Leesville Ledger, published tri-weekly (Tuesday, Friday, and Sunday) in Leesville, LA
Kisatchie Ranger District: Natchitoches Times, published daily (Tuesday thru Friday and on Sunday) in Natchitoches, LA
Winn Ranger District: Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA

Land Between the Lakes National Recreation Area, Kentucky and Tennessee

Area Supervisor Decisions

The Paducah Sun, published daily in Paducah, KY

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS

District Ranger Decisions

Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS
Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS
Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS
De Soto Ranger District: Clarion-Ledger, published daily in Jackson, MS
Holly Springs Ranger District: Clarion-Ledger, published daily in Jackson, MS
Homochitto Ranger District: Clarion-Ledger, published daily in Jackson, MS
Tombigbee Ranger District: Clarion-Ledger, published daily in Jackson, MS

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC

District Ranger Decisions

Appalachian Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC
Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC
Croatan Ranger District: The Sun Journal, published daily (except Saturday) in New Bern, NC
Grandfather Ranger District: McDowell News, published daily in Marion, NC
Highlands Ranger District: The Highlander, published weekly (mid May-mid Nov Tues & Fri; mid Nov-mid May Tues only) in Highlands, NC
Pisgah Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC
Tusquitee Ranger District: Cherokee Scout, published weekly (Wednesday) in Murphy, NC
Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC
Wayah Ranger District: The Franklin Press, published bi-weekly (Tuesday and Friday) in Franklin, NC

Ouachita National Forest, Arkansas and Oklahoma

Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR

District Ranger Decisions

Caddo Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Fourche Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Jessieville/Winona Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Mena/Oden Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Poteau/Cold Springs Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Womble Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Oklahoma Ranger District (Choctaw; Kiamichi; and Tiak) Tulsa World, published daily in Tulsa, OK

Ozark-St. Francis National Forest, Arkansas

Forest Supervisor Decisions

The Courier, published daily (Tuesday through Sunday) in Russellville, AR

District Ranger Decisions

Sylamore Ranger District: Stone County Leader, published weekly (Tuesday) in Mountain View, AR
Buffalo Ranger District: Newton County Times, published weekly in Jasper, AR
Bayou Ranger District: The Courier, published daily (Tuesday through Sunday) in Russellville, AR
Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR
Boston Mountain Ranger District: Southwest Times Record, published daily in Fort Smith, AR
Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR
St. Francis Ranger District: The Daily World, published daily (Sunday through Friday) in Helena, AR

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX

District Ranger Decisions

Angelina National Forest: The Lufkin Daily News, published daily in Lufkin, TX
Davy Crockett National Forest: The Lufkin Daily News, published daily in Lufkin, TX
Sabine National Forest: The Lufkin Daily News, published daily in Lufkin, TX
Sam Houston National Forest: The Courier, published daily in Conroe, TX
Caddo & LBJ National Grasslands: Denton Record-Chronicle, published daily in Denton, TX

The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published on June 6, 2002, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR 215. The list of newspapers to be used for 215 notice and decision is corrected as follows:

National Forests in Florida, Florida

District Ranger Decisions

Apalachicola Ranger District

Correct:

Calhoun-Liberty Journal, published weekly (Wednesday) in Bristol, FL

Dated: November 13, 2002.

R. Gary Pierson,

Deputy Regional Forester.

[FR Doc. 02–29287 Filed 11–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Yakutat Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakutat Resource Advisory Committee will meet in Yakutat, Alaska. The purpose of the meeting is to initiate the Yakutat Resource Advisory Committee. The committee was formed to carry out the requirements of the Secure Rural Schools and Self-Determination Act of 2000. The agenda for this initial meeting includes a discussion of how the Yakutat Resource Advisory Committee will operate, how often they will meet and how they will solicit project proposals.

DATES: The meeting will be held December 2, 2002, from 6–9 p.m.

ADDRESSES: The meeting will be held at the Kwaan Conference Room, 712 Ocean Cape Drive, Yakutat, Alaska. Send written comments to Tricia O'Connor, c/o Forest Service, USDA, P.O. Box 327, Yakutat, AK 99689, (907) 784–3359 or electronically to *poconnor@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Tricia O'Connor, District Ranger and Designated Federal Official, Yakutat Ranger District, (907) 784–3359.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring resource projects or other Resource Advisory Committee matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by November 27, 2002 will have the opportunity to address the Council at those sessions.

Dated: November 12, 2002.

Fred S. Salinas,

Deputy Forest Supervisor Tongass National Forest.

[FR Doc. 02–29353 Filed 11–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1252]

Expansion of Foreign-Trade Zone 191, Palmdale, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City of Palmdale, grantee of Foreign-Trade Zone 191, submitted an application to the Board for authority to expand FTZ 191 to include a site at the California City Airport Industrial Park (40 acres) in California City, California (Site 10), adjacent to the Los Angeles-Long Beach Customs port of entry (FTZ Docket 20–2002; filed 4/16/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 20086, April 24, 2002) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 191 is approved, subject to the Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 4th day of November, 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–29343 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Participation Agreement and Trade Mission Application; Comment Request

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (2) (A)).

DATES: Written comments must be submitted on or before January 21, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230. Phone number: (202) 482–0266. e-mail: *dhynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Joseph J. English, U.S. & Foreign Commercial Service, Export Promotion Services, Room 2110, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–3334, and fax number: (202) 482–0115.

SUPPLEMENTARY INFORMATION:

I. Abstract

The ITA–4008P, AParticipation Agreement'', is the vehicle by which individual firms agree to participate in any of ITA's trade promotion program, and record their required participation fee to the U.S. Department of Commerce (DOC). Together with the relevant ITA–4008P–A, AConditions of Participation'', it forms a contract between the individual firm and the DOC. The ITA–4008P–1, ATrade Mission Application'', is used to solicit information from firms seeking to participate in DOC overseas trade missions covered by the Statement of Policy Governing Overseas Trade Missions of the Department of Commerce issued on March 3. 1997. Trade Mission participants are required to complete the Forms ITA–4008P, ITA–4008P–1, and ITA–4008P–A. Other DOC trade event (not trade mission) participants complete Forms ITA–4008P and ITA–4008P–A.

II. Method of Collection

The forms are sent by request to potential U.S. firms.

III. Data

OMB Number: 0625–0147.

Form Number: ITA–4008P, ITA–4008P–1 and ITA–4008P–A.

Type of Review: Regular Submission.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 7,500.

Estimated Time Per Response: 20–70 minutes.

Estimated Total Annual Burden Hours: 2,792 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $150,315.00 ($100,495.00 for respondents and $56,720.00 for federal government).

IV. Request for 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 (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. They also will become a matter of public record.

Dated: November 5, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–29201 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–580–809

Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: On October 1, 2002, the Department of Commerce published a notice of preliminary results of its changed circumstances review on certain circular welded non-alloy steel pipe from Korea (*see Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Changed Circumstances Review*, 67 FR 61578). We have now completed the review and determine Husteel Company, Ltd. to be the successor-in-interest to Shinho Steel Company, Ltd.

EFFECTIVE DATE: November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Scott Holland, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1279.

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 (''the Department'') regulations are to 19 CFR Part 351 (2002).

Background:

On October 1, 2002, the Department published its preliminary results in the **Federal Register** (*see Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Changed Circumstances Review*, 67 FR 61578) (''*Preliminary Results*''), preliminarily finding Husteel Company, Ltd. (''Husteel'') to be the successor-in-interest to Shinho Steel Company, Ltd. (''Shinho''). We invited interested parties to comment on these preliminary findings. No comments were received from interested parties.

Scope of the Review

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela*, 61 FR 11608 (March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following *Harmonized Tariff Schedule* of the United States (''HTSUS'') subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and Customs Service purposes, our written description of the scope of this proceeding is dispositive.

Successorship and Final Results of Review

Because we received no comments on the preliminary results, for the reasons stated in the *Preliminary Results* and based on the facts on the record, we find Husteel to be the successor-in-interest to Shinho for antidumping duty cash deposit purposes.

Therefore, Husteel will be assigned the same cash deposit rate with respect to the subject merchandise as the predecessor company, Shinho (i.e., 2.99 percent) (*see Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Amended Final Results of Antidumping Administrative Review*, 66 FR 28422 (May 23, 2001)). This cash deposit requirement will be effective upon publication of this notice of final results of changed circumstances review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date. This cash deposit rate shall remain in effect until publication of the final results of the next administrative review involving Husteel.

This determination is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.221(c)(3).

Dated: November 12, 2002.

Richard Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–29348 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey or Scot Fullerton, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–2312 or (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations are to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2002).

Background

In accordance with 19 CFR § 351.214(b)(2), on March 29, 2002, the Department received the timely and properly filed request from Tianjin Tiancheng Pharmaceutical Co., Ltd. (TTPC), for a new shipper review of its exports of glycine. On May 17, 2002, the Department initiated a new shipper review of the antidumping duty order on glycine for the period of review of March 1, 2001 through February 28, 2002. (67 FR 36572)

Extension of Time Limit for Preliminary Results

Section 351.214(i)(1) of the Department's regulations requires the Department to issue preliminary results of a new shipper review within 180 days of the date of initiation. However, if the Secretary concludes that a new shipper review is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days under section 351.214(i)(2) of the Department's regulations. Because of the complex nature of both TTPC's supplier relationships and its reported factors of production information, and the resultant need to gather additional information and conduct further analysis into these areas, we find this review to be extraordinarily complicated.

Accordingly, the Department is extending the time limit for the completion of the preliminary results to 300 days after the date of initiation, in accordance with section 751(a)(2)(B)(iv) of the Act and 351.214(i)(2) of the Department's regulations. The preliminary results will now be due on March 13, 2003. The final results will in turn be due 90 days after the date of issuance of the preliminary results, unless extended.

Dated: November 12, 2002.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–29345 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Administrative Duty Review.

SUMMARY: On July 10, 2002, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain helical spring lock washers from the People's Republic of China. We gave interested parties an opportunity to comment. Based upon our analysis of the comments and information received, we have made changes to the margin calculations presented in the final results of the review. We find that helical spring lock washers from the People's Republic of China are not being sold in the United States below normal value by Hangzhou Spring Washer Company, Co. Ltd., also known as Zhejiang Wanxin Group Co., Ltd.

EFFECTIVE DATE: November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4087.

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 (2001).

Background

On July 10, 2002, the Department published in the **Federal Register** the preliminary results of its administrative review of helical spring lock washers (''HSLWs'') from the People's Republic of China (''PRC'') (*Certain Helical Spring Lock Washers from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 45702 (July 10, 2002) (''*Preliminary Results*''). We received surrogate value information from the petitioner, Shakeproof Assembly Components Division of Illinois Tool Works Inc., on July 29, 2002. The petitioner submitted a case brief on August 8, 2002. Hangzhou Spring Washer Co., Ltd., also known as Zhejiang Wanxin Group Co., Ltd. (''Hangzhou''), the respondent, submitted case and rebuttal briefs on August 8, 2002 and August 13, 2002, respectively.

The Department determined that the petitioner's case brief contained new factual information and, on August 22, 2002, the Department formally requested the new factual information submitted by petitioner in its case brief. Hangzhou was asked to comment on the new information and it did so September 3, 2002.

The Department has completed the antidumping duty administrative review in accordance with section 751 of the Act.

Scope of Order

The products covered by this review are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off- line. HSLWs are designed to: (1) function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and, (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to this review are currently classifiable under subheading 7318.21.0030 of the *Harmonized Tariff Schedule of the United States*

(''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Review

The period of review (''POR'') is from October 1, 2000 through September 30, 2001.

Comparisons

We calculated export price and normal value based on the same methodology used in the *Preliminary Results* with the following exception:

For labor, we used the regression-based wage rate for the PRC as revised in September 2002. See ''Expected Wages of Selected NME Countries'' located on the Internet at http://ia.ita.doc.gov/wages/00wages/00wages/htm.

In valuing the steel wire rod input, we have included certain movement charges that were omitted in the preliminary results.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding are addressed in the November 7, 2002, Issues and Decision Memorandum (''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 Department. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn/summary/list.htm. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of the Review

The weighted-average dumping margin for the period October 1, 2000 through September 30, 2001 is as follows:

Manufacturer/exporter	Time Period	Margin (percent)
Hang Zhou Spring Washer Co., Ltd/Zhejiang Wanxin Group Co., Ltd	10/01/00–09/30/01	0.13 (*de minimis*)

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated importer- 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-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer and dividing this amount by the total value of the sales to that importer. Where an importer-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 and dividing this amount by the total quantity sold to that importer.

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.

Furthermore, the following deposit rates will be effective upon publication of these final results for all shipments of HSLWs from the PRC 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 Hangzhou, which has had a separate rate in the investigation and all reviews, no deposit will be required because the company had a *de minimis* (*i.e.*, less than 0.5 percent) rate in this review; (2) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate, 128.63 percent, which is the All Other PRC Manufacturers, Producers and Exporters rate from the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the PRC*, 58 FR 48833 (September 20, 1993); and, (3) for 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 rates shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also 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 thereturn/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 7, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments in the Issues and Decision Memorandum

Comment 1: Department's Acceptance of New Information

Comment 2: Valuation of Steel Wire Rod (SWR); Inconsistencies in Reported Data

Comment 3: Valuation of SWR; Comparison of Prices Paid by Hangzhou to PRC Import Prices

Comment 4: Valuation of SWR; Allegations that Imports into the PRC Are Dumped

Comment 5: Verification for ''Good Cause''

Comment 6: Valuation of Hydrochloric Acid

Comment 7: Calculation of Factory Overhead

[FR Doc. 02–29346 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and determination to revoke order in part.

SUMMARY: On August 6, 2002, the Department of Commerce published the preliminary results of the 2000–2001 administrative review of the antidumping duty order on sebacic acid from the People's Republic of China. This review covers three manufacturers/exporters of the subject merchandise to the United States. The products covered by this order are all grades of sebacic acid which include but are not limited to CP Grade, Purified Grade, and Nylon Grade. The period of review is July 1, 2000, through June 30, 2001.

We are revoking the antidumping duty order with respect to one manufacturer/exporter because this company has met the requirements under 19 CFR 351.222.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Strollo or Patrick Connolly, AD/CVD Enforcement, Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0629 or (202) 482–1779, 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 regulations of the Department of Commerce (the Department) regulations are to 19 CFR part 351 (2001).

Background

On August 6, 2002, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on sebacic acid from the People's Republic of China (PRC). *See Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke,* 67 FR 50870 (Aug. 6, 2002) (*Preliminary Results*). The review covers two exporters and their respective manufacturers. The period of review (POR) is July 1, 2000, through June 30, 2001.

We invited interested parties to comment on the preliminary results of review. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH2)_8(COOH)_2$, which include but are not limited to CP Grade (500 ppm maximum ash, 25 maximum APHA color), Purified Grade (1000 ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500 ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C10 dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Separate Rates

Two of the three respondents in this case, Guangdong Chemicals Import and Export Corporation (Guangdong) and Tianjin Chemicals Import and Export Corporation (Tianjin), have requested separate, company-specific antidumping duty rates. In the *Preliminary Results,* we found that Guangdong and Tianjin had met the criteria for the application of separate antidumping duty rates. *See Preliminary Results,* 67 FR 50871. We have not received any other information since the preliminary results which would warrant reconsideration of our separate rates determination with respect to these companies. We therefore determine that Guangdong and Tianjin should be assigned individual dumping margins in this administrative review.

With respect to the third respondent, Sinochem International Chemicals Corp. (Sinochem International), which did not respond to the Department's questionnaire, we determine that this company does not merit a separate rate. The Department assigns a single rate to companies in a non-market economy (NME), unless an exporter demonstrates an absence of government control. We determine that Sinochem International is subject to the country-wide rate for this review because it failed to demonstrate an absence of government control.

Use of Facts Available

As explained in the preliminary results, the use of facts available is warranted in this case because Sinochem International, which is part of the PRC entity (*see* the ''Separate Rates'' section above), has failed to respond to the original questionnaire and has refused to participate in this administrative review. Therefore, in accordance with sections 776(a)(2)(A) and (C) of the Act, we find that the use of facts available is appropriate for Sinochem International. Furthermore, in the preliminary results we determined that Sinochem International did not cooperate to the best of its ability with our request for necessary information. Therefore, in accordance with section 776(b) of the Act, we applied adverse inferences in selecting from among the facts available. As adverse facts available in this proceeding, in accordance with the Department's practice, we preliminarily assigned Sinochem International and all other exporters subject to the PRC-wide rate the petition rate of 243.40 percent, which is the PRC-wide rate established in the less than fair value (LTFV) investigation, and the highest dumping margin determined in any segment of this proceeding. *See Antidumping Duty Order: Sebacic Acid From the People's Republic of China (PRC),* 59 FR 35909 (July 14, 1994). As explained in the preliminary results, we determined that this margin was corroborated in accordance with section 776(c) of the

Act in the LTFV investigation. *See Preliminary Results,* 67 FR 50871–72. There is no evidence on the record which warrants revisiting this issue in these final results, and no interested party submitted comments on our use of adverse facts available. Accordingly, we continue to use the petition rate from the LTFV investigation of 243.40 percent as adverse facts available.

Determination To Revoke 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 normal value (NV) in the current review period and that the company will not sell subject merchandise at less than NV in the future; (2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and (3) an agreement to immediate 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). Upon receipt of such a request, the Department will consider: (1) Whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV; and (3) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping. *See* 19 CFR 351.222(b)(2)(i).

As noted in the *Preliminary Results,* Tianjin submitted the proper certifications pursuant to 19 CFR 351.222(e)(1), and requested revocation of the antidumping duty order, in part, based on an absence of dumping for at least three consecutive years. Because Tianjin was found to have made sales below NV in the preliminary results of this administrative review, we preliminarily determined that Tianjin did not qualify for revocation. As a result of changes made since the preliminary results of this review, however, we now find that Tianjin meets the first criterion of 19 CFR 351.222(b)(2)(i).[1] Moreover, after consideration of Tianjin's certifications and its comments submitted in response to the *Preliminary Results,* we determine that Tianjin is not likely to sell the subject merchandise in the United States below NV in the future. Furthermore, at verification, we examined the quantity and value of sales for all three years that form the basis for the request, and we confirmed that Tianjin's aggregate sales to the United States have been made in commercial quantities during each of these years. *See* the July 10, 2002, memorandum to Louis Apple from Shawn Thompson and Patrick Connolly entitled ''Verification of the Sales Responses of Tianjin Chemicals Import and Export Corporation in the Antidumping Duty Administrative Review on Sebacic Acid from the People's Republic of China'' at pages 7–8. *See also* the November 7, 2002, memorandum to the file from Patrick Connolly entitled ''Analysis of Commercial Quantities for Tianjin Chemicals Import and Export Corporation's Request for Revocation.'' As stated above, Tianjin has 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 Tianjin, subsequent to the revocation, sold the subject merchandise at less than NV. Finally, based on our review of the record, there is no basis to find continued application of the antidumping order necessary to offset dumping. Therefore, we find that Tianjin and its supplier, Hengshui Dongfeng Chemical Co., Ltd. (Hengshui), qualify for revocation of the antidumping duty order on sebacic acid under 19 CFR 351.222(b)(2)(i) and (3).[2] Accordingly, we are revoking the order with respect to subject merchandise produced by Hengshui and exported by Tianjin.

Effective Date of Revocation

This revocation applies to all entries of subject merchandise that are produced by Hengshui and are exported by Tianjin, and are entered, or withdrawn from warehouse, for consumption on or after July 1, 2001. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposits or bonds. The Department will further instruct the Customs Service to refund with interest any cash deposits on entries made after July 1, 2001.

Analysis of Comments Received

All issues raised in the case brief by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated November 7, 2002, which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in 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 Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://www.ia.ita.doc.gov/frn/summary/countrylist.htm* under the heading ''China.'' The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Moreover, for these final results, we have revalued labor for both Guangdong and Tianjin based on the regression-based wage rate for 2000 in accordance with 19 CFR 351.408(c)(3). For purposes of the preliminary results, we used the 1999 data because more recent data was not yet available.

Final Results of Review

We determine that the following percentage weighted-average margin percentages exist for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Guangdong Chemicals Import and Export Corporation	1.34
Tianjin Chemicals Import and Export Corporation	0.47

[1] We note that the Department did not conduct an administrative review of the antidumping duty order on sebacic acid for the 1999–2000 review period. However, pursuant to 19 CFR 351.222(d), we are not required to conduct a review of the intervening year so long as we conduct a review in the first and third years of the three year consecutive time period.

[2] On October 18, 2002, Tianjin certified that Hengshui was its only supplier during all three years that form the basis for the revocation request.

Manufacturer/exporter	Margin (percent)
PRC Country-Wide Rate	243.40

Because we have revoked the order with respect to Tianjin's exports of subject merchandise produced by Hengshui, we will order the Customs Service to terminate the suspension of liquidation for exports of such merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 2001, and to refund all cash deposits collected.

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we do not have the information to calculate an estimated entered value. Accordingly, we have calculated importer-specific duty assessment rates for the subject merchandise by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity of those sales. 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-specific ad valorem ratios based on the export prices. We will direct the Customs Service to assess the resulting assessment rates uniformly on all entries of that particular importer made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.* less than 0.50 percent). The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and, therefore, *de minimis*, the Department shall require no deposit of estimated antidumping duties; (2) for a company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) the cash deposit rate for all other PRC exporters will be 243.40 percent, the PRC-wide rate established in the LTFV investigation; and (4) the cash deposit rate for a non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 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 751(a)(1) and 777(i) of the Act.

Dated: November 7, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Universe of Sales.
2. Valuation of Activated Carbon.
3. Partial Revocation.

[FR Doc. 02–29344 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–533–810

Stainless Steel Bar from India: Final Results of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of New Shipper Antidumping Duty Administrative Review.

SUMMARY: On August 19, 2002, the Department of Commerce published the preliminary results of the new shipper administrative review of the antidumping duty order on stainless steel bar from India. We gave interested parties an opportunity to comment on the preliminary results. Based on an examination of our calculations, we have made a change for the final results. We find that the reviewed company made sales of stainless steel bar from India in the United States below normal value during the period of review, February 1 through July 31, 2001.

DATES: *Effective Date:* November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Cole Kyle, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–1503.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended effective January 1, 1995, (''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

The manufacturer/exporter that requested this new shipper antidumping duty administrative review is Uday Engineering Works (''Uday''). The period of review (''POR'') is February 1 through July 31, 2001. Since the publication of the preliminary results of this review (*see Stainless Steel Bar from India: Preliminary Results of New Shipper Antidumping Duty Administrative Review*, 67 FR 53775 (August 19, 2002)), the following events have occurred:

On September 10, 2002, we issued a supplemental questionnaire to Uday. Uday filed its response on September 23, 2002. Uday filed a case brief on October 2, 2002. Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steel Corp., Empire Specialty Steel, and the United Steelworkers of America (collectively, ''the petitioners'') filed a rebuttal brief on October 16, 2002. On October 28, 2002, Uday submitted additional written argument. As this submission did not meet the definition of case or rebuttal briefs outlined in the Department's regulations, the Department did not consider this submission in making its decision (*see* 19 CFR 351.309).

Scope of Review

Imports covered by this review are shipments of stainless steel bar (''SSB''). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which, if less than 4.75 mm in thickness, have a width measuring at least 10 times the thickness, or, if 4.75 mm or more in thickness, have a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this new shipper administrative review are addressed in the ''Issues and Decision Memorandum'' from Susan Kuhbach, Acting Deputy Assistant Secretary, Import Administration, to Richard Moreland, Acting Assistant Secretary for Import Administration, dated November 12, 2002, (''*Decision Memorandum*''), which is hereby adopted by this notice. A list of the issues which parties raised and to which we responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. 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 Import Administration's 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 Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Normal Value Comparisons

To determine whether sales of stainless steel bar from India to the United States were made at less than normal value, we compared export price to normal value. Our calculations followed the methodologies described in the preliminary results, except that we corrected a clerical error in the recalculation of Uday's imputed credit expense reported on its U.S. sale (*see Uday Engineering Works Final Results Calculation Memorandum* dated November 12, 2002.

Final Results of Review

We determine that the following percentage margin exists for the period February 1 through July 31, 2001:

Producer/Manufacturer/ Exporter	Weighted-Average Margin
Uday Engineering Works	19.80%

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).

Pursuant to its published announcement, the Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review (*see* ''Announcement Concerning Issuance of Liquidation Instructions Reflecting Results of Administrative Reviews'' (August 9, 2002) (*http://ia.ita.doc.gov/download/liquidation-announcement.html*).

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this new shipper antidumping duty administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate indicated above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 12.45 percent, the ''all others'' rate established in the less-than-fair-value investigation (*see Stainless Steel Bar from India; Final Determination of Sales at Less Than Fair Value*, 59 FR 66915 (December 28, 1994)).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during 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.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: November 12, 2002.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix 1

Issues in Decision Memorandum

Comment 1. Calculation of U.S. Imputed Credit Expenses
Comment 2. Variable Cost of Manufacturing
Comment 3. Duty Drawback

[FR Doc. 02–29347 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110102F]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of an application to modify an existing-scientific research/enhancement permit (1112) and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for a permit modification from the Southwest Fisheries Science Center (SWFSC) in Santa Cruz, CA (1112). The modified permit would affect five Evolutionarily Significant Units (ESUs) of salmonids identified in Supplementary Information below. This document serves to notify the public of the availability of the permit modification application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on December 19, 2002.

ADDRESSES: Written comments on the modification request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment: Daniel Logan, Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404 6528 (ph: 707 575 6053, fax: 707 578 3435). Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 3226 (301 713 1401).

FOR FURTHER INFORMATION CONTACT: Daniel Logan at phone number 707–575–6053, or e-mail: *dan.logan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222 226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the following five threatened salmonid ESUs: threatened California Coastal Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central California Coast coho salmon (*O. kisutch*), threatened Central California Coast steelhead (*O. mykiss*), threatened Northern California steelhead, and threatened South-central California Coast steelhead.

Modification Request Received

SWFSC requests a modification to permit 1112 for takes of adult and juvenile ESA-listed Chinook salmon, coho salmon, and steelhead associated with studies monitoring the ecology of salmonids in streams, estuaries, and the coastal ocean of California. Presently, permit 1112 authorizes take of juvenile, endangered, Sacramento River winter-run Chinook salmon. This requested modification would add intentional takes of threatened California Coastal Chinook salmon, threatened Central California Coast coho salmon, threatened Central California Coast steelhead, threatened Northern California Coast steelhead, and threatened South-central California Coast steelhead to SWFSC's permit.

Dated: November 12, 2002.

Susan Pultz,

Acting Chief, Endangered Species Division,Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–29358 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111202F]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) will hold a work session, which is open to the public.

DATES: The HMSPDT will meet Tuesday, December 3, 2002 from 9 a.m. until 5 p.m.; and Wednesday, December 4, 2002 from 9 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the Hubbs-Sea World Research Institute, East Room, 2595 Ingraham Street, San Diego, CA 92109, telephone: (619) 226–3870.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council, (503) 820-2280.

SUPPLEMENTARY INFORMATION: On October 29, 2002, the Council adopted the fishery management plan (FMP) for West Coast highly migratory species (HMS). The primary purpose of this HMSPDT work session is to incorporate Council guidance, perform editorial work, and prepare the FMP for submission to the U.S. Secretary of Commerce.

Although nonemergency issues not contained in the HMSPDT meeting agenda may come before the HMSPDT for discussion, those issues may not be the subject of formal HMSPDT action during this meeting. HMSPDT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the HMSPDT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820-2280 at least 5 days prior to the meeting date.

Dated: November 13, 2002.

Richard W. Surdi,

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

[FR Doc. 02–29359 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

United States Climate Change Science Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice of open workshop.

SUMMARY: The U.S. Global Change Research Act of 1990 initiated the U.S. Global Change Research Program (USGCRP) that continues today as a major sponsor of global change research. In June 2001 President George W. Bush directed the USGCRP agencies to develop a focused Climate Change Research Initiative (CCRI) with the goal of accelerating the USGCRP research activities in the next 2 to 5 years to assist in the development of public policy and natural resource management tools related to climate change issues. The U.S. Climate Change Science Program (CCSP), incorporating the USGCRP and the CCRI, will hold a comprehensive workshop to receive participants' individual comments on a discussion draft version of its Strategic Plan for climate change and global change studies. When finalized, the draft strategic Plan reviewed during and after the Workshop will provide the principal guidance for the U.S. global change and climate change research programs during the next several years, subject to revisions as appropriate to respond to newly developed information and decision support tools.

TIME AND DATE: The workshop will be held Tuesday, December 3, 2002, from 9:30 a.m.–5:30 p.m., Wednesday, December 4, 2002, from 8:30 am–5:30 p.m., and Thursday, December 5, 2002, from 8:30 a.m.–4 p.m. *These times may be subject to change. Refer to the Web site listed below for a final meeting agenda.*

PLACE: The workshop will be held at the Marriott Wardman Park Hotel, 2660 Woodley Road, NW., in Washington, DC.

STATUS: The meeting will be open to registered participants. The public may register at the Web site below or by sending a fax to 303–497–8633 with the following information: (1) Prefix: (Dr., Mr., Ms., other); (2) first name/given name; (3) middle initial; (4) last name/surname; (5) name as you want it printed on your name badge; (6) organization/institution; (7) department, division or program; (8) street address; (9) city; (10) state/province (if applicable); (11) ZIP or postal code; (12) country; (13) telephone number; (14) fax number; and (15) email address. *Limited registration may be available at the Workshop, but cannot be guaranteed due to space consideration.* The Workshop will include daily plenary sessions and several breakout sessions. Each breakout session will include invited reviewer comments as well as the opportunity for general attendee comments. All comments must be submitted by individual participants. Group consensus comments will not be accepted. The discussion draft of the Strategic Plan and directions for submitting comments has been posted on the Web site below. Comments, questions and suggestions are welcomed from both scientific and stakeholder communities during and after the Workshop. Comments on the Strategic Plan can be submitted up to January 13, 2003.

MATTERS TO BE CONSIDERED: To assure the continued scientific credibility of the CCSP, the Workshop will provide a comprehensive review of the discussion draft of the Strategic Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Sandy MacCracken, U.S. Climate Change Science Program, Suite 250, 1717 Pennsylvania Ave, NW., Washington, DC 20006. (Phone: 202–223–6262, Fax: 202–223–3065, e-mail: *smaccrac@usgcrp.gov*); or visit the CCSP Web site at *http://www.climatescience.gov.*

James R. Mahoney,

Assistant Secretary for Oceans and Atmosphere and Director, U.S. Climate Change Science Program.

[FR Doc. 02–29317 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–KB–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103102C]

Marine Mammals; File Nos. 358–1564, 782–1532, 1016–1651, 800–1664, 434–1669, 1010–1641, and 881–1668

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

ACTION: Issuance of permits and permit amendments.

SUMMARY: Notice is hereby given that the following individuals/organizations have been issued a permit or permit amendment to take Steller sea lions (Eumetopias jubatus) for the purposes of scientific research: Dr. Glenn VanBlaricom, Washington Cooperative Fish and Wildlife Research Unit, School of Aquatic and Fishery Sciences, University of Washington, Seattle, WA 98195; Dr. Randall Davis, Department of Marine Biology, Texas A M University, Galveston, TX 77551; the Oregon Department of Fish and Wildlife (ODFW), Corvallis, Oregon 97330 (PI: Robin Brown); the Alaska SeaLife Center (ASLC), Seward, Alaska 99664 (PI: Don Calkins); the National Marine Mammal Laboratory (NMML), National Marine Fisheries Service, NOAA, Seattle, WA 98115–0070 (PI: Dr. Thomas Loughlin); the Alaska Department of Fish and Game (ADFG), Juneau, Alaska 99802–5526 (PI: Dr. Thomas Gelatt).

ADDRESSES: The permits, permit amendments, and related documents, are available for review upon written request, by downloading from the

internet, or by appointment in the following office(s):

All documents: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910, (301)713–2289, or the Division's Web Page at *http://www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_review.html*.

For permit 782–1532 (NMML) and Files No. 1016–1651 (Univ. of Washington) and 434–1669 (ODFW): Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700,(206)526–6150; and

For permits 782–1532 (NMML), 358–1564–02 (ADFG) and Files No. 1016–1651 (Univ. of Washington), 800–1664 (Davis), and 881–1668 (ASLC): Alaska Region, NMFS, PO Box 21668, Juneau, AK 99802–1668,(907)586–7221.

FOR FURTHER INFORMATION CONTACT: Dr. Tammy Adams or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On June 27, 2002 , notice was published in the **Federal Register** (67 FR 43283) that requests for scientific research permits and permit amendments to take Steller sea lions had been submitted by the above-named individuals/organizations. The requested permits and permit amendments have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 358–1564–02, which expires on June 30, 2005, authorized the permit holder to take Steller sea lions of all ages and both sexes in Alaska and British Columbia by aerial/boat surveys, capturing, handling, flipper tagging, blood/biopsy sampling, hot-branding, collection of blood and tissue samples, attachment of scientific instruments, recaptures, and accidental mortality. The amended permit authorizes takes of additional sea lions by increased frequency of aerial surveys, and additional takes of individual sea lions by additional recaptures, increased blood and tissue sampling, tagging, administering Evans blue dye, and additional accidental mortality.

Permit No. 782–1532, which expires on December 31, 2004, authorizes the permit holder to take Steller sea lions of all ages and both sexes in Alaska, by aerial/boat surveys, capturing, handling, flipper tagging, blood/biopsy sampling, attachment of scientific instruments, and hot-branding. The amended permit increase the frequency of takes by aerial surveys; includes Southeast Alaska in monthly surveys; increases the number of animals to be incidentally harassed during scat collection; and allows additional procedures for animals already authorized for capture, including using gas anesthesia, branding of any animal captured, injecting Evan's blue dye and deuterated water, collecting additional blood and tissue samples, using bioelectric impedance analysis, and an increase in the number of accidental mortalities.

Permit No. 800–1664 authorizes takes of threatened and endangered juvenile and adult female Steller sea lions in Alaska by capture, anesthesia, hot-branding, tissue sampling (including blood, skin, and blubber), attachment of scientific instruments (video system/data logger and satellite transmitters), and accidental mortality.

Permit No. 1016–1641 authorizes takes of threatened and endangered Steller sea lions in the Aleutian Islands, Gulf of Alaska, and southeast Alaska by remote biopsy darting, incidental harassment, and accidental mortality, to collect blubber samples for analysis to assess prey selection. Some samples will be exported to Canada for analysis. Northern fur seals (Callorhinus ursinus) and harbor seals (Phoca vitulina richardsi) may be incidentally harassed during biopsy sampling.

Permit No. 434–1669 authorizes takes of threatened Steller sea lions in California, Washington, and Oregon by capture, hot-branding, flipper tagging, collection of blood and tissue samples from, attachment external scientific instruments to, harassment incidental to these activities and remote monitoring, and accidental mortality.

Permit No. 881–1668, issued to the Alaska SeaLife Center, authorizes takes of threatened and endangered Steller sea lions in Alaska by capture, hot-branding, flipper tagging, collection of blood and tissue samples from, attachment of external scientific instruments, accidental mortality, and harassment incidental to these activities and remote monitoring.

Permit No. 1010–1641 authorizes takes of Steller sea lions of all ages by harassment during aerial surveys and vessel-based behavioral observations in the western Gulf of Alaska, and scat collection at rookeries and haulouts along the Alaska Peninsula and Eastern Aleutian Islands.

Issuance of these permits and permit amendments, as required by the ESA, was based on a finding that the permits (1) were applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of these permits, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 12, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–29357 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110102I]

Marine Mammals; File No. 821–1588

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Texas A&M University, Department of Marine Biology, PO Box 1675, Galveston, Texas 77551 (Principal Investigator: Dr. Randall W. Davis) has requested an amendment to scientific research Permit No. 821–1588–01.

DATES: Written or telefaxed comments must be received on or before December 19, 2002.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those

individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Carrie Hubard (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 821–1588–01 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 821–1588–01 authorizes the permit holder to conduct research under three projects: (1) capture, tag, sample, release Weddell seals (*Leptonychotes weddelli*) on McMurdo Sound, Antarctica; (2) approach, tag, biopsy, photograph sperm whales (*Physeter macrocephalus*) in the Gulf of Mexico, and conduct research activities on Odontocetes that may result in Level B harassment; and (3) import/export marine mammal specimens obtained from dead animals. The permit holder requests authorization to take up to two times each, 30 adult female northern elephant seals (*Mirounga angustirostris*) and 10 subadult seals of either sex during each of three years by capture, restraint, sedation, attachment of instruments, placement of catheters into blood vessels, placement of subcutaneous temperature and intravenous oxygen sensors, and taking muscle biopsies. Adult females may be pregnant, although no late-term pregnant seals will be sampled. Level B harassment may occur on an additional 40 seals per year during observations to check flipper tags for identification. Up to two accidental mortalities per year are requested for this amendment. Research will occur at Ano Nuevo Point, California. The purpose of this research is to investigate the behavioral and energetic adaptations that enable elephant seals to forage at depth in the northern Pacific Ocean.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 14, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–29361 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

November 12, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 19, 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 Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site 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 Categories 300/301 and 604 are being adjusted, variously, for swing and carryover.

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 63030, published on December 4, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 19, 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]
Other specific limits	
300/301	5,343,847 kilograms.
604	1,631,178 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–29293 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On September 11, 2002, the Department of Education published a 60-day public comment period notice in the **Federal Register** (Page 57584, Column 1) for the information collection, ''Direct Loan Income Contingent Repayment Plan Alternative Document of Income''. The correct title for this collection is ''Income Contingent Repayment Plan—Consent to Disclosure of Tax Information''. The Leader, Regulatory Management Group,

Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Lew Oleinick at his e-mail address *Lew.Oleinick@ed.gov.*

Dated: November 13, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 02–29223 Filed 11–18–02; 8:45 am]

BILLING CODE 4000–01–P

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 19, 2003.

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 13, 2002.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Performance Information on Students Served by McKinney-Vento Homeless Education Subgrants.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 51.

Burden Hours: 612.

Abstract: State Education Agencies will submit information for a single State application to the Department to be able to receive formula grant funds under Title X Part C of the No Child Left Behind Act of 2001. The purpose of the Education for Homeless Children and Youth Program is to improve the educational outcomes for children and youth in homeless situations. The statues for this program are designed to ensure all homeless children and youth have equal access to public school education and for States and LEAs to review and revise policies and regulations to remove barriers to enrolling, attendance and academic achievement.

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 2157. 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. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@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 Kathy Axt at her e-mail address *Kathy.Axt@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. 02–29224 Filed 11–18–02; 8:45 am]

BILLING CODE 4000–01–P

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 19, 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 13, 2002.

John Tressler, Leader,

Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Local-Flex Application.

Frequency: Semi-Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 240.

Burden Hours: 19,200.

Abstract: Application for local educational agencies (LEAs) seeking to enter into local flexibility demonstration agreements (''Local-Flex'' agreements). By statute, the Department can select 80 LEAs through a competitive process with which to enter into Local-Flex agreements. These agreements give LEAs the flexibility to consolidate certain Federal education funds and to use those funds for any educational purpose permitted under the Elementary and Secondary Education Act (ESEA) in order to meet the State's definition of adequate yearly progress (AYP) and specific measurable goals for improving student achievement and narrowing achievement gaps.

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 2059. 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. Requests may also be electronically mailed to the Internet address *OCIO_IMG_Issues@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 Kathy Axt at her e-mail address *Kathy.Axt@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. 02–29298 Filed 11–18–02; 8:45 am]

BILLING CODE 4000–01–P

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 19, 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 13, 2002.

John Tressler, Leader,

Regulatory Management Group, Office of the Chief Information Officer.

Office of English Language Acquisitions

Type of Review: New.

Title: School Improvement: Foreign Language Assistance Program for State Educational Agencies.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 4,000.

Abstract: This application is used by State educational agencies to apply for discretionary grants authorized under the Foreign Language Assistance Program for State Educational Agencies.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grants Information Collections (1890–0001). Therefore, this 30-day public comment notice will be the only public comment notice published for this information collection.

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 2188. 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. Requests may also be electronically mailed to the Internet address *OCIO_IMG_Issues@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 Sheila Carey at her e-mail address *Sheila.Carey@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. 02–29299 Filed 11–18–02; 8:45 am]

BILLING CODE 4000–01–P

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 19, 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 13, 2002.

John Tressler, Leader,

Regulatory Management Group, Office of the Chief Information Officer.

Office of English Language Acquisitions

Type of Review: New.

Title: School Improvement: Foreign Language Assistance Program for Local Educational Agencies.

Frequency: Annually.

Affected Public:

State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 150.

Burden Hours: 12,000.

Abstract: This application is used by local educational agencies to apply for discretionary grants authorized under the Foreign Language Assistance Program for Local Educational Agencies.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grants Information Collections (1890–0001). Therefore, this 30-day public comment notice will be the only public comment notice published for this information collection.

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 2188. 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. Requests may also be electronically mailed to the Internet address *OCIO_IMG_Issues@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 Sheila Carey at her e-mail address *Sheila.Carey@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. 02–29300 Filed 11–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

DATES: Thursday, December 5, 2002; 6 p.m. to 9:30 p.m.

ADDRESSES: Double Tree Hotel, 8773 Yates Drive, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Update on Rocky Flats site closure progress
2. Review and finalize draft end-state recommendation language
3. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday-Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb French at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC, on November 13, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–29306 Filed 11–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–17–001]

Gulf States Pipelines Corporation; Notice Shortening Comment Period

November 13, 2002.

On October 29, 2002, Gulf States Pipeline Corporation (Gulf States) filed an Offer of Settlement in the above-docketed proceeding. Included in its filing was a request to shorten the period for filing initial and reply comments in response to the Offer of Settlement. Gulf States states that there are no intervenors in this docket and the Commission Staff supports the Settlement. Consequently, we are shortening the date for filing initial comments to and including November 18, 2002. Reply comments should be filed on or before November 25, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29279 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–11–000]

Jupiter Energy Corporation; Notice of Application

November 13, 2002.

On November 4, 2002, Jupiter Energy Corporation (Jupiter), 14141 Southwest Freeway, Sugar Land, Texas 77478, a wholly owned subsidiary of Union Oil Company of California (Unocal), filed an application in Docket No. CP03–11–000, pursuant to Section 7(b) of the Natural Gas Act (NGA), and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon all of Jupiter's certificated services, to rescind its certificates, and to declare Jupiter to be exempt from the Commission's jurisdiction, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–8659.

Jupiter states that it performs primarily a non-jurisdictional gathering function, and that it provides this service to only a single customer, Unocal, its parent corporation. Based upon the proposed abandonment and the rescinding of certificates, Jupiter states that it also requests the Commission to determine that Jupiter will no longer be a ''natural gas company'' subject to the Commission's jurisdiction under the NGA.

Jupiter states that it was the first offshore, natural gas pipeline facility constructed in the Gulf of Mexico. The facility was constructed around 1950 and was located approximately 10 miles offshore in about 40 feet of water in what is now designated as Vermillion Block No. 39 and it served the offshore production of Unocal's predecessor, The Pure Oil Company (Pure).

According to Jupiter, as originally configured, the Jupiter System consisted of two parallel pipelines: one approximately 8.5-mile pipeline with a diameter of 8 5/8 inches (the 8-inch Line) and one approximately 10.2-mile pipeline with a 10 3/4-inch diameter (the 10-inch Line). The 8-inch Line is connected to a platform in Vermillion Block No. 39 that was originally owned by Pure and now by Unocal (Platform 39A). The 10-inch Line was originally connected to both that platform and another nearby platform owned by Phillips Petroleum/Kerr McGee, which has been abandoned for at least a decade. The two Jupiter Lines connected at the shoreline with two parallel pipelines owned by Tennessee Gas Transmission Company (Tennessee).

Jupiter states that in February 2000, shortly after being acquired by Unocal, Jupiter constructed a sub sea interconnect at an existing intersection of Jupiter's 8-inch Line and a 24-inch lateral line of Transcontinental Gas Pipe Line Corporation (Transco) in Vermillion Block No. 22. The Transco interconnection is located approximately 3.2 miles downstream from Platform 39A. Jupiter constructed the interconnect and then abandoned in-place the remainder of its 8-inch Line downstream of the Transco interconnect pursuant to blanket authority granted in Docket No. CP99–536. Tennessee subsequently abandoned its shoreline interconnect with Jupiter's 8-inch Line.

According to Jupiter, the Jupiter pipelines transport unprocessed gas from Platform 39A to the nearest interstate pipelines: either approximately 3 miles on the 8-inch Line to the sub sea interconnect with Transco or approximately 10 miles on the 10-inch Line to the shoreline interconnect with Tennessee. The pipelines operate at pressures ranging from 750 to 950 psig. The gas transported to Tennessee's system on the Jupiter 10-inch Line reaches, after approximately 22 miles of transportation on Tennessee, a separation and dehydration facility that is owned by Jupiter (Jupiter Plant), which straddles the Tennessee line and separates out gas condensate. At the outlet of the Jupiter Plant, the gas is metered and continues on the Tennessee system.

Jupiter states that Unocal owns a series of gathering facilities attached to the wells located in Vermillion Block Nos. 23, 38 and 39 that feed into Platform 39A and then into Jupiter. Those gathering facilities consist of platforms and lease pipelines ranging in diameter from 4.5-inches to 8 and 5/8ths-inches. Jupiter states that it essentially functions as part of this Unocal gathering system and that Unocal expects to integrate the Jupiter gathering facilities into its own gathering operations following Commission approval of this application.

Jupiter also states that Unocal has been the only shipper on Jupiter since at least 1992. Unocal owns all of the gas transported on Jupiter and currently produces over 97.5% of that gas, purchasing the remaining small amounts prior to transportation on Jupiter. Unocal acquired Jupiter in 1997 and, since then, has actively sought other potential shippers for Jupiter without success and it is most unlikely that any other potential shipper will seek access to the Jupiter system.

Any questions regarding this application may be directed to Carol Westmoreland, Union Oil Company of California, Law Department, 14141 Southwest Freeway, Sugar Land, Texas 77478 at (281) 287–7492 or J. Patrick Nevins, Hogan & Hartson, L.L.P., 555 Thirteenth Street, NW., Washington, DC 20004 at (202) 637–6441.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 4, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and

will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 instructions on Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29276 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–4–003]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

November 13, 2002.

Take notice that on November 7, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub 1st First Revised Sheet No. 265, to become effective on November 1, 2001.

Maritimes proposes to comply with the Commission's November 4, 2002 order, in Docket No. RP02–4–002, by restoring the existing language to the last sentence of Section 11.6(c) of the General Terms and Conditions of its FERC Gas Tariff.

Maritimes states that copies of this filing were mailed to all affected customers of Maritimes and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29280 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–111–000]

Midwest Independent System Operator, PJM Interconnection, L.L.C., et al.; Notice of Initiation of Proceeding and Refund Effective Date

September 4, 2002.

Take notice that on July 31, 2002, the Commission issued an order in the above-indicated docket initiating a proceeding in Docket No. EL02–111–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL02–111–000 will be 60 days after publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29247 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–66–000]

MIGC, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 13, 2002.

Take notice that on November 7, 2002, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1, the following tariff sheets, to become effective January 1, 2003:

First Revised Sheet No. 17
First Revised Sheet No. 32
Third Revised Sheet No. 48
Original Sheet No. 90F

MIGC asserts that the purpose of this filing is to clarify, consistent with Commission policy, the specific types of transportation discounts that may be granted by MIGC in a manner consistent with FERC-approved discounts on other pipelines. The revised tariff sheets modify the General Terms and Conditions (GTC) of MIGC's Tariff which are applicable to the various throughput Rate Schedules and add a reference to the provisions in the rate schedules. By including this additional language in the GTC, MIGC seeks to avoid the need for filing individual discount agreements on the grounds that they contain ''material deviations'' from the *pro forma* service agreements, consistent with the Commission's rulings in Natural Gas Pipeline Company of America, 84 FERC

• 61,099 (1998), Columbia Gas Transmission Corp., 92 FERC] 61,080 (2000) and subsequent orders. The identification of the types of discounts to which MIGC and an individual shipper may agree will clarify MIGC's flexibility to provide the services required to meet competitive market conditions.

In addition to its ability to agree to a basic discount from the stated maximum rates, MIGC proposes to create a new Section 26 in the General Terms and Conditions of its Tariff entitled ''Types of Discounting'' which reflects the various kinds of discounts MIGC may give to meet competitive circumstances. For example, MIGC may provide a specified discounted rate: to

certain specified quantities under the Service Agreement; if specified quantity levels are actually achieved or with respect to quantities below a specified level; to production reserves committed by the Shipper; during specified time periods; to specified points of receipt, points of delivery, supply areas, transportation paths or defined geographical areas; in a specified relationship to the quantities actually transported (*i.e.*, that the rates shall be adjusted in a specified relationship to quantities actually transported); or to provide a specified discount rate to provide for upward or downward adjustments to rate components to achieve an agreed-upon overall rate so long as all rate components remain within their respective minimum and maximum amounts, may be made only prospectively, and may not affect the determination of refunds that may be due under applicable law for the time prior to the adjustment of such components.

In all circumstances the discounted rate shall be between the maximum rate and minimum rate applicable to the service provided.

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 website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29281 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–67–000]

North Baja Pipeline, LLC; Notice of Tariff Filing

November 13, 2002.

Take notice that on November 8, 2002, North Baja Pipeline, LLC (NBP), tendered for filing to be part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 124, with an effective date of December 8, 2002.

NBP states that the filing is being made to remove the five-year term matching cap provided for in the right of first refusal section of its Tariff. NBP indicates that this modification is consistent with the FERC's October 31, 2002 Order on Remand in Docket No. RM98–10–011.

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29282 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–68–000]

PG&E Gas Transmission Northwest Corporation; Notice of Tariff Filing

November 13, 2002.

Take notice that on November 8, 2002, PG&E Gas Transmission, Northwest Corporation (GTN), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, the tariff sheets attached to Appendix A to the filing, with an effective date of December 8, 2002.

GTN states that the filing is being filed to remove the five-year term matching cap provided for in the right of first refusal section of its Tariff. GTN also states, that this modification is consistent with the FERC's October 31, 2002 Order on Remand in Docket No. RM98–10–011.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29283 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES03–13–000]

South Carolina Electric & Gas Company; Notice of Application

November 13, 2002.

Take notice that on November 4, 2002, South Carolina Electric & Gas Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue promissory notes and other evidences of unsecured short-term indebtedness through December 31, 2003, in an amount not to exceed $350 million at any one time.

Any person desiring to be hear or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. *Comment Date:* December 4, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29277 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP88–67–078]

Texas Eastern Transmission, LP

November 13, 2002.

Take notice that on October 31, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, the tariff sheets listed on Appendix A to the filing, to become effective December 1, 2002.

Texas Eastern asserts that the purpose of this filing is to comply with the Stipulation and Agreement filed by Texas Eastern on December 17, 1991 in Docket Nos. RP88–67, *et al.* (Phase II/PCBs) and approved by the Commission on March 18, 1992 (Settlement), and with Section 26 of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1.

Texas Eastern states that such tariff sheets reflect an decrease in the PCB-Related Cost component of Texas Eastern's currently effective rates. For example, the decrease in the 100% load factor average cost of long-haul service under Rate Schedule FT–1 from Access Area Zone ELA to Market Zone 3 is $0.0001 per dekatherm.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions. Copies of this filing have also been mailed to all parties on the service list in Docket Nos. RP88–67, *et al.* (Phase II/PCBs).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29284 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–426–011]

Texas Gas Transmission Corporation; Notice of Negotiated Rate

November 13, 2002.

Take notice that on November 7, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective November 1, 2002:

Seventh Revised Sheet No. 40

Texas Gas states that the purpose of this filing is to reflect a negotiated rate agreement with Tennessee Valley Authority.

Texas Gas states that copies of the revised tariff sheets are being mailed to all parties on the service list, Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29278 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–054]

TransColorado Gas Transmission Company; Notice of Compliance Filing

November 13, 2002.

Take notice that on November 7, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifty-Third Revised Sheet No. 21 and Twenty-Sixth Revised Sheet No. 22A to be effective November 7, 2002.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

The tendered tariff sheets propose to revise TransColorado's Tariff to reflect a new negotiated-rate contract with United Energy Trading, LLC.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29285 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–11–000, et al.]

Harold E. Dittmer, et al.; Electric Rate and Corporate Filings

November 8, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Harold E. Dittmer, Hanover Power, LLC

[Docket No. EC03–11–000]

Take notice that on November 5, 2002, Harold E. Dittmer (Mr. Dittmer), and Hanover Power, LLC (HP) (collectively, the Applicants), filed with the Federal Energy Regulatory Commission (the Commission) an application pursuant to section 203 of the Federal Power Act seeking authorization for the transfer of certain jurisdictional facilities whereby Applicants request approval of the transfer of 49% of the upstream membership interests in Wellhead Power Panoche, LLC to HP.

Comment Date: November 26, 2002.

2. Fresno Power Investors, L.P., Harold E. Dittmer, Hanover Power (Gates), LLC

[Docket No. EC03–12–000]

Take notice that on November 5, 2002, Fresno Power Investors, L.P. (FPILP), Harold E. Dittmer (Mr. Dittmer), and Hanover Power (Gates), LLC (HPG) (collectively, the Applicants), filed with the Federal Energy Regulatory Commission (the Commission) an application pursuant to section 203 of the Federal Power Act seeking authorization for the transfer of certain jurisdictional facilities whereby Applicants request approval of the transfer of 92.5% of the upstream membership interests in Wellhead Power Gates, LLC to HPG.

Comment Date: November 26, 2002.

3. Harbor Cogeneration Company

[Docket No. EC03–13–000]

Take notice that on November 5, 2002, Harbor Cogeneration Company (Harbor Cogeneration), ABB Equity Ventures Inc. (ABB Equity), and Black Hills Energy Capital, Inc. (BH Energy Capital) filed an application with the Federal Energy Regulatory Commission requesting authorization from the Commission for ABB Equity to transfer to BH Energy Capital its limited partnership interests in two investment funds that indirectly own interests in Harbor Cogeneration.

Comment Date: November 29, 2002.

4. High Winds, LLC

[Docket No. EG03–12–000]

Take notice that on November 4, 2002, High Winds, LLC (the Applicant), filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of owning and operating an up to 166 MW wind-powered generation facility located in Solano County, California. Electric energy produced by the facility will be sold at wholesale.

Comment Date: November 25, 2002.

5. Mirant Las Vegas, LLC

[Docket No. EG03–13–000]

Take notice that on November 4, 2002, Mirant Las Vegas, LLC (Mirant Las Vegas) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Mirant Las Vegas proposes to own a 575 MW net generating capability facility located near the city of Las Vegas, Nevada (Facility). The proposed Facility is expected to commence commercial operation in March, 2003. All output from the Facility will be sold

by Mirant Las Vegas exclusively at wholesale.

Comment Date: November 25, 2002.

6. Choctaw Generation Limited Partnership

[Docket No.EL03–24–000]

Take notice that on November 4, 2002, Choctaw Generation Limited Partnership filed with the Federal Energy Regulatory Commission a petition for declaratory order requesting that the Commission disclaim jurisdiction under the FPA with respect to the passive owner/lessor(s) that will assume ownership of its facility in connection with a sale-leaseback financing.

Comment Date: November 18, 2002.

7. Westar Generating, Inc.

[Docket No. ER01–1305–005]

Take notice that on November 4, 2002, Westar Generating, Inc. (WGI) submitted for filing a refund report in compliance with the Commission's Order issued September 5, 2002 in the above-referenced docket.

WGI states that a copy of the filing has been served on Westar Energy, Inc. and the Kansas Corporation Commission.

Comment Date: November 25, 2002.

8. Entergy Services, Inc.

[Docket No. ER01–1951–004]

Take notice that on November 4, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a supplement to its compliance refund report filed on September 23, 2002, in accordance with the Commission's Order.

The supplemental refund report details the refunds for Conway Corporation, West Memphis Utilities, Farmers Electric Cooperative Corporation, Brazos Electric Power Cooperative, and the City of Prescott.

Comment Date: November 25, 2002.

9. BOC Energy Services, Inc.

[Docket No. ER03–44–002]

Take notice that, on November 5, 2002, BOC Energy Services, Inc. (BOC) filed corrected designations to supplement BOC's Petition For Acceptance of Initial Rate Schedule, Waiver, and Blanket Authority, filed with the Federal Energy Regulatory Commission on October 15, 2002.

BOC submits these corrected designations to: (1) Modify the format of BOC's FERC Electric Rate Schedule; and (2) supplement BOC's Rate Schedule to list the specific ancillary services BOC plans to provide and the areas in which BOC intends to provide these services.

Comment Date: November 26, 2002.

10. Xcel Energy Services, Inc., Public Service Company of Colorado

[Docket No. ER03–154–000]

Take notice that on November 4, 2002, Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (PSCo) submitted for filing with the Federal Energy Regulatory Commission (Commission) the Generation Interconnection Agreement between PSCo and Thermo Cogeneration Partnership, L.P.

PSCo requests the letter agreements be accepted for filing effective October 1, 2001, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date requested.

Comment Date: November 25, 2002.

11. High Winds, LLC

[Docket No. ER03–155–000]

Take notice that on November 4, 2002 High Winds, LLC tendered for filing an application for authorization to sell energy and capacity at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: November 25, 2002.

12. PECO Energy Company

[Docket No. ER03–156–000]

Take notice that on November 5, 2002 PECO Energy Company (PECO) submitted for filing revised pages of an Interconnection Agreement dated January 12, 2001 by and between PECO and the Joint Owners of the Peach Bottom Atomic Power Station. Copies of this filing were served on the Joint Owners and PJM Interconnection, L.L.C.

Comment Date: November 26, 2002.

13. Florida Power & Light Company

[Docket No.ER03–157–000]

Take notice that on November 5, 2002, Florida Power & Light Company (FPL) tendered for filing Amendment Number Six to the Network Service Agreement between FPL and the Florida Municipal Power Agency (NSA), and related agreements. Amendment Number Six adds the City of Lake Worth, Florida as a Network Member under the NSA. FPL also proposes to terminate the Non-Firm Transmission Service Agreement Between Florida Power & Light Company and the City of Lake Worth; the Short Term Firm Transmission Service Agreement Between Florida Power & Light Company and the City of Lake Worth; and the Rate Schedule designated for the Territorial Agreement and Contract for Interchange Service Between Florida Power & Light Company and Lake Worth Utilities Authority City of Lake Worth, Florida. FPL proposes an effective date for the agreements and terminations of October 1, 2002.

Comment Date: November 26, 2002.

14. Entergy Services, Inc.

[Docket No. ER03–158–000]

Take notice that on November 5, 2002, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc. (Entergy Louisiana), tendered for filing six copies of a Notice of Termination of the Interconnection and Operating Agreement and Generator Imbalance Agreement between Entergy Louisiana and Duke Energy Ruston, LLC.

Comment Date: November 26, 2002.

15. Virginia Electric and Power Company

[Docket No. ER03–159–000]

Take notice that Virginia Electric and Power Company (Dominion Virginia Power), on November 5, 2002, tendered for filing a revised service agreement providing for sales of capacity and energy to its affiliate, Dominion Retail, Inc., pursuant to Dominion Virginia Power's cost-based power sales tariff, FERC Electric Tariff No. 7. Dominion Virginia Power is making the revision to include, as part of the service agreement, the Master Power Purchase and Sale Agreement between the Company and Dominion Retail, which contains language that the Virginia State Corporation Commission (SCC) has ordered Dominion Virginia Power to include and file with the Federal Energy Regulatory Commission.

Copies of the filing were served upon the public utility's jurisdictional customers, and the Virginia State Corporation Commission *Comment Date:* November 26, 2002.

16. Mirant Las Vegas, LLC

[Docket No. ER03–160–000]

Take notice that on November 5, 2002, Mirant Las Vegas, LLC (Mirant Las Vegas) tendered for filing an application for an order accepting its FERC Electric Tariff No. 1, granting certain blanket approvals, including the authority to sell electricity at market-base rates, and waiving certain regulations of the Commission. Mirant Las Vegas requested expedited Commission consideration. Mirant Las Vegas requested that its Rate Schedule No. 1 become effective upon the earlier of the date the Commission authorizes market-based rate authority, or December 10, 2002. Mirant Las Vegas also filed its FERC Electric Tariff No. 1.

Comment Date: November 26, 2002.

17. Boston Edison Company

[Docket No. ER03–161–000]

Take notice that on November 6, 2002, Boston Edison Company (Boston Edison) tendered for filing an executed Related Facilities Agreement between Boston Edison and Lake Road Generating Company, L.P. Boston Edison requests an effective date of the Agreement of January 5, 2003.

Boston Edison states that it has served a copy of the filing on Lake Road and the Massachusetts Department of Telecommunications and Energy.

Comment Date: November 26, 2002.

18. Earth Resources, Inc.

[Docket No. QF03–1–000]

Take notice that on October 7, 2002, Earth Resources, Inc. Filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying Small Power Production facility pursuant to Section 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be a 5.35 MW Waste Wood-fired Small Power Production Facility (Facility) and will be located in the Town of Carnesville, Franklin County, Georgia. The Facility will be interconnected with the Hart EMC transmission system.

Comment Date: November 29, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at http://www.ferc.gov, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29409 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–15–000, et al.]

Entergy Power Generation Corporation, et al. Electric Rate and Corporate Regulation Filings

November 12, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Entergy Power Generation Corporation, *et al.*

[Docket No. EC03–15–000]

Take notice that on November 6, 2002, Entergy Power Generation Corporation (EPGC), on behalf of itself and Entergy Asset Management, Inc. (EAM), Entergy Power Crete Corporation, Entergy Power Ventures, L.P. (EPV), Entergy Power Ventures Corp II (Ventures II), Entergy Power Warren Corporation I, and Warren Power, LLC (WP) tendered for filing an application requesting all necessary authorizations under Section 203 of the Federal Power Act to engage in a corporate reorganization. Under the terms of the proposed reorganization, interests in EPV, Crete Energy Venture, LLC, and WP, currently indirectly held by EPGC, would be transferred to EAM, a subsidiary of EPGC, in exchange for EAM stock. EPV owns a 70 percent interest in an approximately 550 megawatt (MW) generating facility under construction in Harrison County, Texas. Crete Energy Venture, LLC owns an approximately 320 MW generation facility located in Crete, Illinois. WP owns an approximately 300 MW generation facility located in Vicksburg, Mississippi.

Copies of this filing have been served on the Arkansas Public Service Commission, the Louisiana Public Service Commission, the City Council of New Orleans, the Mississippi Public Service Commission, and the Texas Public Utility Commission.

Comment Date: November 27, 2002.

2. American Ref-Fuel Company of Essex County

[Docket No. EG98–75–000]

On November 7, 2002, American Ref-Fuel Company of Essex County tendered for filing information with respect to a change in facts relative to its status as an exempt wholesale generator and a demonstration that such change does not affect its status as an exempt wholesale generator pursuant to Section 32(a) of the Public Utility Holding Company Act of 1935, as amended, and Section 365.8 of the Commission?s Regulations.

Comment Date: December 3, 2002.

3. Conectiv Pennsylvania Generation, Inc.

[Docket No. EG03–14–000]

Take notice that on November 7, 2002, Conectiv Pennsylvania Generation, Inc. (CPG) filed an Application for Determination of Exempt Wholesale Generator Status (Application) pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA), all as more fully explained in the Application.

CPG either owns or has on order seven natural gas-fired combustion turbines that will be operated as components of three separate 500 MW combined cycle generating modules (the Eligible Facilities for the purposes of PUHCA and the Commission?s EWG regulations). While no specific site or sites have been selected for the location of the Eligible Facilities, it is anticipated that they will be interconnected to the transmission system operated by the PJM Interconnection, LLC via transmission voltage facilities. CPG has served this filing on the Maryland Public Service Commission, Delaware Public Service Commission, New Jersey Board of Public Utilities, Virginia State Corporation Commission, District of Columbia Public Service Commission and the Securities and Exchange Commission (SEC).

Comment Date: December 3, 2002.

4. Minnesota Power

[Docket No. ER02–2587–001]

Take notice that on November 7, 2002, Minnesota Power tendered for filing an amendment to the Wholesale First Revised Rate Schedule, FERC No. 153 for Dahlberg Light & Power Company. The amendment includes the Commission?s Order No. 84 adder for Third-Party purchase and resale transactions and therefore are subject to FERC Order No. 84.

Comment Date: November 29, 2002.

5. Reliant Energy Mid-Atlantic Power Holdings, LLC

[Docket No. ER02–2600–000]

Take notice that on November 6, 2002 Reliant Energy Mid-Atlantic Power Holdings, LLC (REMPH) filed an amended notice of the cancellation of the FERC Electric Rate Schedule No. 1 for Sithe Warren LLC (the Warren Station). REMPH states that the cancellation results from the decommissioning of the units at the Warren Station and will be effective on September 30, 2002.

Comment Date: November 27, 2002.

6. Northwest Regional Transmission Association

[Docket No. ER03–162–000]

Take notice that on November 5, 2002, the Northwest Regional Transmission Association (NRTA) tendered for filing a Second Revised Sheet No. 53 (superseding both Original and First Revised Sheets No. 53) of the Governing Agreement of the Northwest Regional Transmission Association (NRTA). This filing revises NRTA?s filing of August 23, 2000 under Docket No. ER99–4508–001, by which NRTA submitted its entire Governing Agreement (including an index of customers) as Northwest Regional Transmission Organization First Revised Electric Rate Schedule FERC No.1 in compliance with Order No. 614, Docket No. RM99–12–000, 90 FERC 61,352, issued March 31, 2000.

NRTA is submitting the enclosed Second Revised Sheet No. 53 of its Governing Agreement because NRTA?s membership has changed. Specifically, Kootenai Electric Coop, Kaiser Aluminum & Chemical Corporation, Columbia Falls Aluminum Company and Tenaska Power Services Company have withdrawn from NRTA. Montana Power Company has become NorthWestern Energy and PECO Energy Power Team has become Exelon Corporation. Finally, the enclosed Second Revised Sheet No. 53 reflects the NRTA membership of B.C. Ministry of Energy, Oregon Department of Energy and Washington Utilities and Transportation Commission. NRTA?s index of customers is revised to reflect all of these matters.

Comment Date: November 26, 2002.

7. Duke Energy Corporation

[Docket No. ER03–163–000]

Take notice that on November 5, 2002, Duke Energy Corporation filed revisions to the Appendices to a contract between Duke Energy Corporation and the Southeastern Power Administration.

Comment Date: November 26, 2002.

8. Entergy Services, Inc.

[Docket No. ER03–164–000]

Take notice that on November 5, 2002, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc. (Entergy Mississippi), tendered for filing six copies of a Notice of Termination of the Interconnection and Operating Agreement and Generator Imbalance Agreement between Entergy Mississippi and MissChem Nitrogen, L.L.C.

Comment Date: November 26, 2002.

9. American Ref-Fuel Company of Essex County

[Docket No. ER03–170–000]

Take notice that on November 7, 2002, American Ref-Fuel Company of Essex County (ARC Essex) tendered for filing an application for blanket authorizations, certain waivers, to reassign transmission rights, to resell firm transmission rights, and authorization to sell energy, capacity and ancillary services as market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: November 29, 2002.

10. Basin Electric Cooperative, Inc.

[Docket Nos. NJ00–7–001, NJ01–6–001 and NJ01–8–001]

Take notice that on November 7, 2002, Basin Electric Power Cooperative, Inc. filed an amendment to its standards of conduct procedures in the above-captioned proceedings. Basin Electric requests that the Commission declare the open access tariff that it filed in the above-captioned proceedings is an acceptable reciprocity tariff under Order No. 888.

Copies of the filing were served upon Basin Electric's transmission customers.

Comment Date: November 29, 2002.

11. Riverside Energy Center, LLC

[Docket No. ES03–11–000]

Take notice that on October 31, 2002, Riverside Energy Center, LLC (Riverside) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue long-term debt securities in an amount not to exceed $300 million under a credit facility.

Riverside also requests a waiver of the Commission?s competitive bidding requirement under 18 CFR 34.2.

Comment Date: November 29, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29153 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM02–16–000]

Hydroelectric Licensing Regulations under the Federal Power Act; Notice of Post-Forum Stakeholder Meeting and Drafting Sessions

November 13, 2002.

In continuing efforts to solicit comments on a new hydroelectric licensing process, Federal Energy Regulatory Commission staff will host a one-day post-forum stakeholder meeting, and a two-day post-forum stakeholder drafting session.

The one-day post-forum meeting will be held in the Commission Meeting Room on December 10, 2002, and the two-day post-forum drafting session will be held on December 11 and 12, 2002, in conference room 3M–2, A & B, both at 888 First Street, NE., Washington, DC.

The post-forum meeting and drafting sessions will start at 9:00 a.m. An agenda for these activities may be viewed on the Commission's Web site by November 27, 2002, at: *http://www.ferc.gov/hydro/docs/hydro_rule.htm*.

The post-forum meeting and drafting sessions are not intended to address issues pending in individually docketed hydropower cases before the Commission. Therefore, all participants are requested to address the agenda topics and avoid discussing the merits of individual proceedings.

The goal of the one-day post-forum meeting is for Commission staff to: (1) Summarize comments received at the public forums conducted throughout the country in October and November and; (2) discuss general issues associated with a rulemaking effort such as retention of the Traditional and/or the Alternative Licensing Processes. The goal of the two-day post-forum drafting session is to provide stakeholders with an opportunity to participate in drafting concepts and language for a new integrated licensing process. All interested persons are invited to attend these activities, however, persons wishing to participate in the two-day post-forum drafting session will need to pre-register.

Participation in the December 11 and 12, 2002, Post-Forum Drafting Session

In addition to full group discussions at the beginning and end of each of the post-forum drafting sessions, participants will be asked to take part in one of three drafting groups. These drafting groups include: (1) Early application development; (2) study plan development (including dispute resolution); and (3) post license application filing. Therefore, those persons wishing to participate in the two-day post-forum drafting session will need to pre-register by December 6, 2002, by registering on-line at *http://www.ferc.gov/registration*. Anyone without access to the web will need to pre-register by contacting Susan Tseng at 202–502–6065. In both pre-registration procedures, participants must indicate their preference for a particular drafting group.

Opportunities for Listening and Viewing the December 10, 2002, Post-Forum Meeting Offsite and for Obtaining a Transcript

The Capitol Connection offers the opportunity for remote listening and viewing of the one-day post-forum meeting, which is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection website at *http://www.capitolconnection.gmu.edu* and click on ''FERC''.

The one-day post-forum meeting will also be transcribed. Those interested in obtaining a copy of the transcript immediately for a fee should contact Ace-Federal Reporters, Inc. at 202–347–3700, or 1–800–336–6646. Two weeks after the post-forum meeting, the transcript will be available for free on the Commission's FERRIS system. Anyone without access to the Commission's web site or who have questions about the post-forum activities should contact Tim Welch at 202–502–8760, or e-mail *timothy.welch@ferc.gov*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29296 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OIG–2002–0001; FRL–7410–4]

Agency Information Collection Activities; Submission of EPA ICR No. 2094.01 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Survey of Air Quality Issues After September 11, 2001 (EPA ICR No. 2094.01) The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 19, 2002.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION SECTION.**

FOR FURTHER INFORMATION CONTACT: Sarah Fabirkiewicz, Office of Program Evaluation, 2460T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2717; fax number: 202–566–0837; e-mail address: *fabirkiewicz.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. EPA was granted a waiver from the 60 day public comment period for a proposed ICR.

EPA has established a public docket for this ICR under Docket ID No. OIG–2002–0001, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752). An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to: oei.docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket.

Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

Title: Survey of Air Quality Issues After September 11, 2001 (EPA ICR Number 2094.01). This is a request for a new collection.

Abstract: The purpose of this ICR is to obtain information, through use of a public survey, about the impact of government communications regarding air quality concerns associated with the collapse of the World Trade Center towers on September 11, 2001. This ICR represents one component of a larger evaluation of EPA's response to air quality concerns associated with the collapse of the World Trade Center towers. The survey will be distributed to randomly selected individuals residing in the five boroughs of New York City. Persons residing in New York City are hereafter referred to as ''the public.'' Data generated from the questionnaire will provide information regarding the public's perception of the adequacy of the information it received about air quality, the public's interpretation of the air quality information it received, and actions taken by the public based on the air quality information received. Findings from the questionnaire in these three areas can be used to improve the way information about air quality is disseminated during times of future emergency and/or disaster. Findings will be useful not only to EPA, but to any agency seeking to improve the effectiveness of its emergency and/or disaster mitigation, response, and recovery activities. In some instances, it may be possible to use the data to inform future emergency and/or disaster response techniques in other cities.

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, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Randomly selected individuals residing in the five boroughs of New York City.

Estimated Number of Respondents: 1067.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 266.75 hours.

Estimated Total Annual Cost: $5,908.51 includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is no change of hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: November 12, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–29337 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2001–8; FRL–7409–9]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Monroe Power Company; Monroe (Walton County), GA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated October 9, 2002, denying a petition to object to a state operating permit issued by the Georgia Environmental Protection Division (EPD) to Monroe Power Company (Monroe Power) located in Monroe, Walton County, Georgia. This order constitutes final action on the petition submitted by the Georgia Center for Law in the Public Interest (GCLPI or Petitioner) on behalf of the Sierra Club. Pursuant to section 505(b)(2) of the Clean Air Act (the Act) any person may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/monroepower_decision2001.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

GCLPI submitted a petition on behalf of the Sierra Club to the Administrator on November 14, 2001, requesting that EPA object to a state title V operating permit issued by EPD to Monroe Power. The Petitioner maintains that the Monroe Power permit is inconsistent with the Act because of: (1) The inadequacy of the public participation process and related public notice; (2) the permit's apparent limitation of enforcement authority and credible evidence; (3) the inadequacy of the monitoring and reporting requirements; (4) the permit's exclusion of startups, shutdowns, and malfunctions; and (5) the incompleteness of permit itself.

On October 9, 2002, the Administrator issued an order denying this petition. The order explains the reasons behind EPA's conclusion that the Petitioner has failed to demonstrate that the Monroe Power permit is not in compliance with

the requirements of the Act on the grounds raised.

Dated: November 6, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 02–29332 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2001–6; FRL–7409–8]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for King Finishing; Dover (Screven County), Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated October 9, 2002, denying a petition to object to a state operating permit issued by the Georgia Environmental Protection Division (EPD) to King Finishing located in Dover, Screven County, Georgia. This order constitutes final action on the petition submitted by the Georgia Center for Law in the Public Interest (GCLPI or Petitioner) on behalf of the Sierra Club. Pursuant to section 505(b)(2) of the Clean Air Act (the Act) any person may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/kingfinishing_decision2001.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

GCLPI submitted a petition on behalf of the Sierra Club to the Administrator on October 9, 2001, requesting that EPA object to a state title V operating permit issued by EPD to King Finishing. The Petitioner maintains that the King Finishing permit is inconsistent with the Act because of: (1) The inadequacy of the public participation process and related public notice; (2) the permit's apparent limitation of enforcement authority and credible evidence; and (3) the inadequacy of the monitoring and reporting requirements.

On October 9, 2002, the Administrator issued an order denying this petition. The order explains the reasons behind EPA's conclusion that the Petitioner has failed to demonstrate that the King Finishing permit is not in compliance with the requirements of the Act on the grounds raised.

Dated: November 6, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 02–29333 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[WA–01–003; FRL–7410–3]

Adequacy Status of the State Implementation Plan Revision for Carbon Monoxide in the Spokane Serious Nonattainment Area, Spokane, WA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this notice, EPA is notifying the public that we have found the motor vehicle emissions budget submitted in the State Implementation Plan Revision for Carbon Monoxide in the Spokane Serious Nonattainment Area, Spokane, Washington adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Spokane Regional Transportation Council, Washington Department of Transportation, and the U.S. Department of Transportation are required to use the motor vehicle emissions budget in this submitted attainment plan for future transportation conformity determinations.

DATES: This finding is effective December 4, 2002.

FOR FURTHER INFORMATION CONTACT: The finding will be available at EPA's conformity Web site: *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity''). You may also contact Wayne Elson, U.S. EPA, Region 10 (OAQ–107), 1200 Sixth Ave, Seattle WA 98101; (206) 553–1463 or *elson.wayne@epa.gov.*

SUPPLEMENTARY INFORMATION: Today's notice is simply an announcement of a finding that we have already made. EPA Region 10 sent a letter to the Washington Department of Ecology on November 1, 2002, stating that the motor vehicle emissions budget in the State Implementation Plan Revision for Carbon Monoxide in the Spokane Serious Nonattainment Area, Spokane, Washington is adequate.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budget is adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 4, 2002.

Michael F. Gearheard,

Acting Regional Administrator, Region 10.

[FR Doc. 02–29338 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7410–2]

Notice of the Ninth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: This notice announces the Ninth Meeting of the Mississippi River/ Gulf of Mexico Watershed Nutrient Task Force. The purpose of this Task Force, consisting of Federal, State, and Tribal members, is to lead efforts to coordinate and support nutrient management and hypoxia-related activities in the Mississippi River and Gulf of Mexico watersheds. The major matter to be discussed at the meeting is implementation of the Action Plan for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico. The Action Plan was developed in fulfillment of a requirement of section 604(b) of the Harmful Algal Blooms and Hypoxia Research Control Act (Pub. L. 105–383—Coast Guard Authorization Act of 1998) to submit a scientific assessment of hypoxia and a plan for reducing, mitigating, and controlling hypoxia in the Gulf of Mexico. The Action Plan was submitted as a Report to Congress on January 18, 2001. Also, a summary will be provided of the Monitoring, Modeling, and Research subworkgroup meeting, held October 16–18, 2002 in St. Louis. The public will be afforded an opportunity to provide input to the Task Force during open discussion periods.

DATES: The one day meeting will be held from 9:30 a.m.–4:30 p.m., Tuesday, December 10, 2002 in Washington, DC.

ADDRESSES: Please see the Web site http://www.epa.gov/msbasin/new.htm for registration, specific meeting location, and hotel information. The meeting room accommodates approximately 125 people, therefore, registration is required. A registration form can be downloaded from the Web site.

FOR FURTHER INFORMATION CONTACT: Katie Flahive, U.S. EPA, Assessment and Watershed Protection Division (AWPD), Mail Code 4503T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Phone (202)–566–1206; E-mail: *flahive.katie@epa.gov*. For additional information on logistics, registration, and accommodations, contact Ansu John, Tetra Tech, Inc., 10306 Eaton Place, Suite 340, Fairfax, VA 22030; Phone: (703) 385–6000; E-mail: *ansu.john@tetratech-ffx.com*.

Dated: November 13, 2002.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 02–29336 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

THE PRESIDENT'S CRITICAL INFRASTRUCTURE PROTECTION BOARD

National Strategy To Secure Cyberspace

November 14, 2002.

AGENCY: President's Critical Infrastructure Protection Board, Executive Office of the President, The White House.

ACTION: Notice of request for ongoing public comment regarding the National Strategy to Secure Cyberspace for comment, notwithstanding the public comment deadline of September 18, 2002.

SUMMARY: Pursuant to the President's charge in Executive Order 12321, the President's Critical Infrastructure Protection Board (the ''Board'') has been engaged in development of the National Strategy to Secure Cyberspace. On September 18, 2002, the Board released to the public a draft of the Strategy ''For Comment'' (the ''Strategy''). The Strategy was made available online at *http:/www.securecyberspace.gov* for viewing and downloading. At the time of the release of the Strategy, the Board invited public comments and set a deadline of November 18, 2002 for such comments. On Oct 11, 2002, through a **Federal Register** Notice, the Board issued a formal public notice soliciting further comments and views from the public on the Strategy, and reiterated the public comment deadline of November 18, 2002. It was noted from the first that—due to the fact that cyberspace security operates in a dynamic landscape where the nature of the threats, solutions, technology, applications and other factors are subject to rapid and sometimes dramatic change ''America's cyberstrategy must be dynamic and continually refreshed to adapt to the changing environment.'' Thus, because the development of the National Strategy to Secure Cyberspace is an ongoing, iterative process, the Board has indicated all along that the Strategy will be a dynamic, evolutionary document, one that will include a formal official release and subsequent, periodic updated versions. As a result, the public dialogue will continue to be interactive, and additional public comments will be welcome and considered first not only following the November 18, 2002 date, but also after the release of the first official version of the Strategy. Comments will be considered in a timely manner and, as appropriate, will be reflected into the evolving Strategy at the earliest possible date. There is no guarantee, however, that comments submitted after the November 18, 2002 deadline will be considered for the current draft of the strategy. Comments not considered for this draft may be reflected in subsequent drafts.

DATES: Comments are invited on an ongoing basis.

ADDRESSES: Comments may be submitted electronically as provided at *http://www.securecyberspace.gov.* In addition, written comments may be sent to: PCIPB/ Strategy Public Comment; The White House; Washington, DC 20502. Individual hard copies of the draft Strategy may be obtained by calling 202–456–5420.

FOR FURTHER INFORMATION CONTACT: Tommy Cabe 202–456–5420.

SUPPLEMENTARY INFORMATION: On October 16, 2001, the President created the Board by Executive Order 12321. The President noted that ''[t]he information technology revolution has changed the way business is transacted, government operates, and national defense is conducted. Those three functions now depend on an interdependent network of critical information infrastructures.'' In the Executive Order, the President directed the Board to ''recommend policies and coordinate programs for protecting information systems for critical infrastructure,'' and called for the Board to ''coordinate outreach to and consultation with the private sector, * * * State and local governments, [and] communities and representatives from academia and other relevant elements of society.''

Pursuant to the President's charge, the Board has been engaged in development of the National Strategy to Secure Cyberspace. On September 18, 2002, the Board released to the public a draft Strategy ''For Comment,'' identifying 24 strategic goals and listing over 80 recommendations. The Strategy was made available online at *http://*

www.securecyberspace.gov for viewing and downloading.

The Strategy was developed based on input from a broad spectrum of individuals and groups that represent the owners and operators of cyberspace, as well as from the key sectors that rely on cyberspace, including Federal departments and agencies, private companies, State and local governments, educational institutions, nongovernmental organizations, and the general public. Town hall meetings to facilitate discussion and stimulate input were held during the spring in Denver, Chicago, Portland Oregon, and Atlanta and this month in Philadelphia. In addition, a list of 53 key questions was compiled, published, and publicized to spark public debate and facilitate informed input. The Board has convened additional town hall meetings around the country in recent weeks to raise awareness about cybersecurity issues, and to solicit and receive the views and input of concerned citizens regarding the Strategy. Town hall meetings were held in Boston, MA (October 14), Pittsburgh, PA (October 24), and New York, NY (November 7), and will be held in Phoenix, AZ (November 14). For further information about specific town hall meetings, see *http://www.securecyberspace.gov.*

At the time of the release of the Strategy and in a subsequent **Federal Register** notice, the Board invited public comments and set a deadline of November 18, 2002 for such comments. While the official comment period will end on November 18th, because the development of the Strategy is an iterative, ongoing process that will include a formal release and subsequent updates, this notice invites additional input because of a recognition that such input will be invaluable for making the strategy even more effective. This reflects recognition of the importance of an ongoing exchange of views, discussion, and input regarding the cyber strategy and the issues it addresses. At a minimum the Strategy must continue to evolve to address changing technologies and to respond appropriately as we better understand the effectiveness of the measures taken and other lessons learned.

By this Notice, the Board solicits further comments and views from the public on the draft Strategy and the first and subsequent official releases of the Strategy, notwithstanding the November 18, 2002 deadline. The Board will consider all comments and, as appropriate, reflect those comments as appropriate into the initial or subsequent versions of the official Strategy. There is no guarantee, however, that comments submitted after the November 18, 2002 deadline will be considered for the current draft of the strategy. Comments not considered for this draft will be reflected in subsequent drafts.

The most efficient way to provide public comment is to do so online through the feedback link at *http://www.securecyberspace.gov.* In order to facilitate review and consideration of public comment, commenters are requested to use this electronic feedback link if at all possible. Comments will also be accepted if mailed to the postal address listed below, but it is requested that such commenters also provide an electronic version of their comments as well as the hard copy (*e.g.*, CD or floppy disc) if possible. In addition, it is requested that all commenters, including those submitting their comments in hard copy form rather than online, make every effort to organize the comments by reference to specific sections of the Strategy and if applicable) the numbered recommendation or discussion topic commented upon.

Those preferring to submit their comments by hard copy (preferably with an accompanying electronic version of the comment) should send them to: PCIPB/ Strategy Public Comment; The White House; Washington, DC 20502. The Board will consider all relevant comments in the further development of the Strategy. However, there are no plans to respond individually to each comment.

Dated: November 14, 2002.

Richard A. Clarke,

Chair, President's Critical Infrastructure Protection Board.

[FR Doc. 02–29394 Filed 11–18–02; 8:45 am]

BILLING CODE 3165–D3–P

FEDERAL COMMUNICATIONS COMMISSION

Media Security and Reliability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of a meeting of the Media Security and Reliability Council (Council). The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: Wednesday, May 28, 2003 at 10:00 a.m. to 11:30 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Kreisman at 202–418–1600 or TTY 202–418–7172.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the broadcast and multichannel video programming distribution industries and experts from consumer, public safety and other organizations to explore and recommend measures that would enhance the security and reliability of media facilities and services.

The Council will receive mid-term reports and potential initial recommendations from its working groups. The Council may also discuss such other matters as come before it at the meeting. Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Barbara Kreisman, the Commission's Designated Federal Officer for the Media Security and Reliability Council, by email (*bkreisma@fcc.gov*) or U.S. mail (2–A666, 445 12th St. SW, Washington, DC 20554). Real Audio and streaming video Access to the meeting will be available at *http://www.fcc.gov/*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–29291 Filed 11–18–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2582]

Petition for Reconsideration of Action in Rulemaking Proceeding

November 13, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by December 4, 2002 See section 1.4(b) (1) of the Commission's rules (47 CFR 1.4(b) (1)). Replies to an opposition must be filed within 10 days

after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Ardmore, Brilliant, Brookwood, Gadsden, Hoover, Moundville, New Hope, Pleasant Grove, Russellville, Scottsboro, Troy, Tuscaloosa and Winfield, Alabama; Okolona and Vardaman, Mississippi; Linden, McMinnville, Pulaski and Walden, Tennessee) (MM Docket No. 01–62, RM–10053, RM–10109, RM–10110 RM–10111, RM–10112, RM–10113, RM–10114, and RM–1011

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–29235 Filed 11–18–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of Review:* Renewal of a currently approved collection.

Title: Interagency Biographical and Financial Report.

OMB Number: 3064–0006.

Annual Burden

Estimated annual number of respondents: 2,040.

Estimated time per response: 4 hours.

Total annual burden hours: 8,160 hours.

Expiration Date of OMB Clearance: December 31, 2002.

SUPPLEMENTARY INFORMATION: The Interagency Biographical and Financial Report is submitted to the FDIC by each individual director or officer of a proposed or operating financial institution applying for federal deposit insurance as a state nonmember bank. The information is used by the FDIC to evaluate the general character of bank management as required by the Federal Deposit Insurance Act.

2. *Type of Review:* Renewal of a currently approved collection.

Title: External Audits.

OMB Number: 3064–0113.

Annual Burden

Estimated number of responses: 1,215 (insured institutions with assets of $500 million or more); 15,033 (insured institutions with assets less than $500 million)

Estimated time per response: 32 hours (insured institutions with assets of $500 million or more); 3/4 hours (insured institutions with assets less than $500 million).

Total annual burden hours: 42,639 hours.

Expiration Date of OMB Clearance: December 31, 2002.

SUPPLEMENTARY INFORMATION: Section 36 of the Federal Deposit Insurance Act imposes auditing and reporting requirements on insured depository institutions which have total assets of $500 million or more. An interagency policy statement extended those requirements on a voluntary basis to institutions with less than $500 million.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–4741, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Legal Division, Room MB–3109, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before December 19, 2002 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: November 13, 2002.

Federal Deposit Insurance Corporation:

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 02–29273 Filed 11–18–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1435–DR]

Louisiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana, (FEMA–1435–DR), dated September 27, 2002, and related determinations.

EFFECTIVE DATE: November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 27, 2002:

Assumption Parish for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–29309 Filed 11–18–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1439–DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–

1439–DR), dated November 5, 2002, and related determinations.

EFFECTIVE DATE: November 5, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or Magda.Ruiz@fema.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 5, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe storms, tornadoes, and flooding on October 24, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance and Hazard Mitigation are later requested and warranted, Federal funds provided under each program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Sandra L. Coachman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Texas to have been affected adversely by this declared major disaster:

Nueces County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–29307 Filed 11–18–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1439–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1439–DR), dated November 5, 2002, and related determinations.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 2002:

Aransas, Hardin, Harris, Jefferson, Orange, and San Patricio Counties for Individual Assistance.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–29308 Filed 11–18–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 3, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Stephen Randolph Buford, Sam Dunkin Buford, Gentner Frederick Drummond, all of Tulsa, Oklahoma, and Sharon Buford Linsenmeyer, Beatrice, Nebraska; to acquire voting shares of N.B.C. Bancshares in Pawhuska, Inc., Pawhuska, Oklahoma, and thereby indirectly acquire voting shares of NBC Bank, Pawhuska, Oklahoma.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Joyce Anne Chiles, Centerville, Washington; William John Firstenburg and Bruce Edward Firstenburg, Vancouver, Washington; to acquire additional voting shares of First Independent Investment Group, Inc., Vancouver, Washington, and thereby indirectly acquire additional voting shares of First Independent Bank, Vancouver, Washington.

Board of Governors of the Federal Reserve System, November 13, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–29274 Filed 11–18–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 13, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Davis Trust Financial Corp., Elkins, West Virginia; to acquire 21.63 percent of the voting shares of First Clay County Banc Corporation, Clay, West Virginia, and thereby indirectly acquire voting shares of Clay County Bank, Inc., Clay, West Virginia.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Prairieland Bancorp Employee Stock Ownership Plan and Trust, Bushnell, Illinois; to increase its ownership of Prairieland Bancorp, Inc., Bushnell, Illinois, from 44.73 percent to 49.77 percent, and thereby indirectly acquire Farmers and Merchants State Bank, Bushnell, Illinois.

Board of Governors of the Federal Reserve System, November 13, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–29275 Filed 11–18–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (EST) November 18, 2002.

PLACE: 4th Floor, Conference Room, 1250 H Street NW., Washington, DC

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the October 21, 2002, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG LLP audit reports:
   U.S. Department of Treasury Operations relating to the Thrift Savings Plan Investments in the Government Securities Investment Fund
   System Enhancement and Software Change Controls of the Thrift Savings Plan at the United States Department of Agriculture, National Finance Center
   Administrative Review of the Thrift Savings Plan Legacy System Subsystems at the United States Department of Agriculture, National Finance Center
   Pre-Implementation Review of the New Thrift Savings Plan Record Keeping System
   Preliminary Report on the Thrift Savings Plan's Retention of the National Finance Center as Record Keeper
4. Semiannual review of status of audit recommendations.
5. Labor Department audit briefing.
6. Quarterly investment policy review.
7. Annual ethics briefing.

Parts Closed to the Public

1. Discussion of litigation.
2. Discussion of personnel matter.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: November 15, 2002.

David L. Hutner,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 02–29482 Filed 11–15–02; 12:44 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 11¼% for the quarter ended September 30, 2002. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 31, 2002.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 02–29492 Filed 11–15–02; 2:06 pm]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

White House Initiative on Asian Americans and Pacific Islanders; President's Advisory Commission; Notice of Cancelled Meeting

In FR Document Number 02–28880 appearing on page 68874 in the issue for Wednesday, November 13, 2002, the meeting of the President's Advisory Commission on Asian Americans and Pacific islanders scheduled for Friday, November 22, 2002 from 10 a.m.–5 p.m. EST at the Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209, has been cancelled.

Dated: November 14, 2002.

Regina B. Schofield,

Director, Office of Intergovernmental Affairs.

[FR Doc. 02–29491 Filed 11–15–02; 2:06 pm]

BILLING CODE 4165–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Native Employment Works (NEW) Program Plan Guidance and Program Report.

OMB No.: 0970–0174.

Description: The Native Employment Works (NEW) program plan is the application for NEW program funding. As approved by the Department of Health and Human Services (HHS), it documents how the grantee will carry out its NEW program. The NEW program plan guidance specifies the information needed to complete a NEW program plan and explains the process for plan submission every third year.

The NEW program report provides information on the activities and accomplishments of grantees' NEW programs. The NEW program report and instructions specify the program data that NEW grantees report annually.

Respondents: Federally-recognized Indian tribes and tribal organizations that are NEW program grantees:

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours (annually)
NEW program plan guidance	26	One, every 3 years	30	780
New program report	53	One annually	15	795

Estimated Total Annual Burden Hours: 1575.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copes of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 12, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–29225 Filed 11–18–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Refugee Unaccompanied Minor Placement Report, Refugee Unaccompanied Minor Progress Report.

OMB No.: 0970–0034.

Description: The two reports collect information necessary to administer the refugee unaccompanied minor program. The ORR–3 (Placement Report) is submitted to ORR by the service provider agency at initial placement and whenever there is a change in the child's status, including termination from the program. The ORR–4 is submitted annually and records the child's progress toward the goals listed in the child's case plan.

Respondents. State governments.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–3	12	15	.417	75
ORR–4	12	60	.250	180

Estimated Total Annual Burden Hours: 255.

In compliance with the requirements of section 3506(c)(21)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20477, Attn: ACF Reports Clearance Officer. All requests should be

identified by the title of the information collection.

The Department specifically requests comments 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) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 11, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–29226 Filed 11–18–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0319]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Blood Establishment Registration and Product Listing, Form FDA 2830

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 19, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Establishment Registration and Product Listing, Form FDA 2830—21 CFR Part 607—(OMB Control Number 0910–0052)—Extension

Under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360), any person owning or operating an establishment that manufactures, prepares, propagates, compounds, or processes a drug or device must register with the Secretary of Health and Human Services, on or before December 31 of each year, his or her name, place of business and all such establishments, and submit, among other information, a listing of all drug or device products manufactured, prepared, propagated, compounded, or processed by him or her for commercial distribution. In part 607 (21 CFR part 607), FDA has issued regulations implementing these requirements for manufacturers of human and products. Section 607.20(a) requires certain establishments that engage in the manufacture of products to register and to submit a list of products in commercial distribution. Section 607.21 requires the establishments entering into the manufacturing of products to register within 5 days after beginning such operation and to submit a product listing at that time. In addition, establishments are required to register annually between November 15 and December 31 and update their product listing every June and December. Section 607.22 requires the use of Form FDA 2830 for registration and product listing. Section 607.25 indicates the information required for establishment registration and product listing. Section 607.26 requires certain changes to be submitted as an amendment to the establishment registration within 5 days of such changes. Section 607.30 requires establishments to update, as needed, their product listing information every June and at the annual registration. Section 607.31 requires that additional product listing information be provided upon FDA request. Section 607.40 requires foreign product establishments to register and submit the product listing information, the name and address of the establishment, and the name of the individual responsible for submitting product listing information. Among other uses, this information assists FDA in its inspections of facilities, and its collection is essential to the overall regulatory scheme designed to ensure the safety of the nation's supply. Form FDA 2830, Establishment Registration and Product Listing, is used to collect this information. The likely respondents are banks, collection facilities, and component manufacturing facilities. FDA estimates the burden of this collection of information based upon the database and past experience of the Center for Biologics Evaluation and Research, Division of Applications in regulatory establishment registration and product listing. Most banks are familiar with the regulations and registration requirements to fill out this form.

In the **Federal Register** of August 2, 2002 (67 FR 50445), FDA published a 60-day notice requesting public comment on the information collection provisions. One comment was received. The comment agrees that the information collection is necessary and the Form FDA 2830 is helpful with the registration process.

The comment stated that we underestimated the hours per response regarding the initial registration and product listing update. The comment stated that it might take up to 2 hours to complete the initial registration and 0.5 hours to complete the product listing update. We decline to change the estimates based on our review of the activities associated with completing the form. Although it may take some establishments longer to complete the form, others may complete the form more quickly. Since the reporting burden includes an estimated average of the time to complete the various activities associated with the form, we believe that the current burden estimates accurately reflect the range of time to complete the form.

The comment also requested that the annual registration process be automated so that each facility could electronically submit the form, if they desire to do so, and also requested that we continue to send a hard copy of the form and instructions as a reminder to registrants to re-register. We are currently in the process of setting up a program for electronic registration. Use of the electronic system will be voluntary. We intend to continue sending a hard copy of the form and instructions for the foreseeable future.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR	Form FDA 2830	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
607.20(a), 607.21, 607.22, 607.25, and 607.40	Initial registration	300	1	300	1	300
607.21, 607.22, 607.25, 607.26, 607.31, and 607.40	Re-registration	2,867	1	2,867	0.5	1,434
607.21, 607.25, 607.30, 607.31, and 607.40	Product listing update	75	1	75	0.25	19
Total						1,753

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–29295 Filed 11–18–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Cancer Institute.

Date: December 9, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To discuss the Stomach and Esophageal Cancers Progress Review Group Report.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lisa Stevens, Executive Secretary, National Institutes of Health, Building 31, Room 3A30, Bethesda, MD 20892, 301/496–1458.

Information is also available on the Institute's/Center's home page; *deainfo.nci.nih.gov/advisory/joint/htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29258 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of K23 Grants.

Date: November 26, 2002.

Time: 1 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert B Moore, PhD, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, 301–435–3541.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 13, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29248 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix (2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Demonstration and Education Research Grant (R18) Program.

Date: December 10, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21060.

Contact Person: Patricia A. Haggerty, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, 301/435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Disease and Resources Research, National Institutes of Health, HHS)

Dated: November 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29252 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel. ELSI Genetic Variation Review.

Date: December 12–13, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rudy O. Pozzati, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402-0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: November 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29249 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

Date: December 10, 2002.

Time: 11:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Building 31, NHGRI Conference Room B2B32, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: November 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29250 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Child Health and Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NICHD.

Date: December 6, 2002.

Open: 8 am to 11 am.

Agenda: A review and discussion of current NICHD intramural research activities will be discussed.

Place: 9000 Rockville Pike, Building 31, Conference Room 2A48, Bethesda, MD 20892.

Closed: 11 am to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: 9000 Rockville Pike, Building 31, Conference Room 2A48, Bethesda, MD 20892.

Contact Person: Owen M. Rennert, MD, Scientific Director, National Institute of Child Health and Human Development, 9000 Rockville Pike, Building 31, room 2A50, Bethesda, MD 20892, (301) 496–2133, *rennerto@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: www.nichd.nih.gov/about/bsd/htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for

Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29251 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, U01 Cooperative Agreement Review.

Date: November 20–21, 2002.

Time: 7:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Katherine Woodbury, Phd., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9629, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: November 7, 2002.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29253 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH and HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel. Marrow Stromal Cell Teleconference.

Date: December 10, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd, Rockville, MD 20852.

Contact Person: Richard D. Crosland, Ph.D, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 27, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29254 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of closed meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Career Development Awards.

Date: December 18, 2002.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: One Democracy Plaza, 6701 Democracy Blvd, Suite 800, Rockville, MD 20876 (Telephone Conference Call).

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

Dated: November 8, 2002.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29259 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.

Date: November 18–20, 2002.

Time: November 18, 2002, 6 pm to recess.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: November 19, 2002, 8:30 am to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Peter E. Lipsky, MD, Scientific Director, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Bldg. 10; Room 9N228, Bethesda, MD 20892, (301) 496–2612.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the intramural review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29260 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Biostatistics Training.

Date: November 26, 2002.

Time: 11 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1225, *rweise@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29261 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Molecular and Cellular Regulation of Tolerance.

Date: December 3, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Room 2148A, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Katherine L. White, PhD, Scientific Review Administrator, NIH/NIAID/DHHS/SRP, 6700B Rockledge Drive, Bethesda, MD 20892, (301) 435–1615, *kw174b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 98.856, Microbiology and Infectious Disease Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29262 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Biodefense and Emerging Infectious Disease Research Opportunities.

Date: December 2, 2002.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700-B Rockledge Drive, Room 1205, Bethesda, MD 20892–7612, (Telephone Conference Call).

Contact Person: Vassil St. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700B Rockledge Drive, MSC, 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29263 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel ICIDR Competitive Supplements in Biodefense.

Date: December 16, 2002.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAID, 6700–B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSCV 7616, Bethesda, MD 20892–7616, 301–496–3528, *gm12w@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases, Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29264 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: January 27, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: The Committee will provide advise on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700-B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7601, 301–435–3732.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29265 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Allergy and Infectious Disease Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: January 27, 2003.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: 12 p.m. to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: January 27, 2003.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room F1/F2, 45 Center Drive, Bethesda, MD 20892.

Open: 12 p.m. to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, Conference Room F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: January 27, 2003.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.

Open: 12 p.m. to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, Conference Room A, 45 Center Drive, E1/E2, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: January 27, 2003.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: The meeting of the full Council will be open to the public for general discussion.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Information is also available on the Institute's/Center's home page: *http://www.niaid.nih.gov/facts/facts.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29266 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Influence of Viral Infection on Transplantation Tolerance.

Date: December 10, 2002.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge, Room 2217, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 6700–B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616, 301–435–9369, *pm158b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29267 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Cellular and Molecular Mechanisms of Autoimmunity.

Date: December 16, 2002.

Time: 8:30 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, NIH/NIAID, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, clapham@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29268 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, T Cell Memory to Pathogens: Generation and Function.

Date: December 20, 2002.

Time: 10 am to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge, Room 2223, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 6700–B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616, 301–435–9369, *pm158b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29270 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Library of Medicine Special Emphasis Panel, November 18, 2002, 9 a.m. to November 19, 2002, 5 p.m., which was published in the **Federal Register** on August 29, 2002, 67 FR 55414.

The meeting will be rescheduled to January 13–14, 2003, to allow for sufficient time for an optimal review process. The meeting is closed to the public.

Dated: November 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29257 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to review HIV/AIDS Molecular Biology grant applications.

Date: November 12–13, 2002.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: The Westin Seattle, 1900 Fifth Avenue, Seattle, WA 98101.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Human Brain Project.

Date: November 12, 2002.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter Lyster, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7806, Bethesda, MD 20892, (301) 435–1256, *lysterp@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reproductive Epidemiology.

Date: November 14, 2002.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience/ZRG1 BDCN–5 (12) SBIR.

Date: November 21, 2002.

Time: 5:30 pm to 6:30 pm.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW, Washington, DC 20036.

Contact Person: Sherry L Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycles.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience/ZRG1 BDCN–4 (10) SBIR.

Date: November 25, 2002.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jay Joshi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, 301–435–1184.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycles.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BISTI Pre Centers of Excellence in Biomedical Computing.

Date: November 26, 2002.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter Lyster, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7806, Bethesda, MD 20892, 301–435–1256, *lysterp@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Endothelin, Neural Control and Hypertension.

Date: December 4, 2002.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, 301–435–1210.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBBP–6(50) R: Autism STAART Centers.

Date: December 8–10, 2002.

Time: 6 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, Franklin Square, 815 14th Street, NW., Washington, DC 20005.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fungal Functional Genomics.

Date: December 9–10, 2002.

Time: 7 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: American Inn of Bethesda, 8130 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038, *djr@helix.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome/Fibromyalgia Syndrome Review Panel.

Date: December 10, 2002.
Time: 10 a. to 3 pm.
Agenda: To review and evaluate grant applications.
Place: River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: J Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockedge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781, *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Empahsis Panel, Prokaryotic Transcription.
Date: December 12, 2002.
Time: 1 pm to 2 pm.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Marian Wachtel, PhD, Scientific Review Administrator Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7808, Bethesda, MD 20892, 301–435–1148, *wachtelm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29255 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 12, 2002, 1:10 pm to November 12, 2002, 3:30 pm, which was published in the **Federal Register** on October 28, 2002, 67 FR 65807–65809.

The meeting will be held December 2, 2002, from 3 pm to 5 pm. The location remains the same. The meeting is closed to the public.

Dated: November 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29256 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for grant program to provide substance abuse treatment and reentry services to sentenced juveniles and young offenders returning to the community from the criminal justice system (short title: Young Offender Reentry Program).

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment(CSAT) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Request for Applications (RFA), including part I, Grant Program to Provide Substance Abuse Treatment and Reentry Services to Sentenced Juveniles and Young Offenders Returning to the Community from the Criminal Justice System (TI 03–001), and part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2003	Est. No. of awards	Project period
Grant Program to Provide Substance Abuse Treatment and Reentry Services to Sentenced Juveniles and Young Offenders Returning to the Community from the Criminal Justice System.	Jan. 17, 2003	$6.0 million	12–14	4 years

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of a reasonable number of applications being hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund any applications. This program is authorized under section 509 of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes standard form 424 (face page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), PO Box 2345, Rockville, MD 20847–2345. Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web home page: *http://www.samhsa.gov* (click on ''Grant Opportunities'').

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), is seeking applications for Fiscal Year 2003 funds to expand and/or enhance substance

abuse treatment and related reentry services in agencies currently providing supervision of and services to sentenced juvenile and young adult offenders returning to the community from incarceration for criminal/juvenile offenses. Applicants are expected to form stakeholder partnerships that will plan, develop and provide community-based substance abuse treatment and related reentry services for the targeted populations. Because reentry transition must begin in the correctional or juvenile facility before release, funding may be used for limited activities in institutional correctional settings in addition to the expected community-based services.

Eligibility: Public and domestic private non-profit entities may apply. For example, the following may apply: State and local governments; Indian Tribes and tribal organizations; courts; community-based organizations; and faith-based organizations.

Availability of Funds: It is expected that approximately $6 million will be available for FY 2003. Approximately 12–14 awards will be made. The average annual award will range from $300,000 to $500,000 in total costs (direct and indirect). The total funds available and actual funding levels will depend on the receipt of an appropriation. Annual continuation of the award depends on the availability of funds and progress achieved.

Period of Support: An award may be requested for a project period of up to 4 years.

Criteria for Review and Funding: General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions concerning program issues, contact: Kenneth W. Robertson, Public Health Advisor, Division of Services Improvement, CSAT/SAMHSA, Rockwall II Building, Suite 740, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–7612. E-Mail: *kroberts@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–9666. E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (standard Form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under ''Assistance with Grant Applications''. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: November 14, 2002.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–29339 Filed 11–18–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Sandhill Crane Harvest Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information

Collection Clearance Officer at the address listed below.

DATES: We accept comments until January 21, 2003.

ADDRESSES: Mail your comments on the requirement to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203; or e-mail *Anissa_Craghead@fws.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, and related forms, contact by phone at Anissa Craghead at(703) 358–2445, or electronically at Anissa_Craghead@fws.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB to renew its approval of the collection of information for the Sandhill Crane Harvest Survey. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0023.

Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird harvest. Knowledge attained by determining harvests and harvest rates of migratory game birds is used to regulate populations (by promulgating hunting regulations) and to encourage hunting opportunity, especially where crop depredations are chronic and/or lightly harvested populations occur. Based on information from harvest surveys, hunting regulations can be adjusted as needed to optimize harvests at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

This information collection approval request seeks approval for us to continue conducting the Sandhill Crane Harvest Survey. This is an annual questionnaire survey of people who obtained a sandhill crane hunting permit. At the end of the hunting season, we randomly select a sample of permit holders and send those people a questionnaire that asks them to report the date, State, county, and number of birds harvested for each of their sandhill crane hunts. Their responses provide estimates of the temporal and geographic distribution of the harvest as well as the average harvest per hunter, which, combined with the total number of sandhill crane permits issued, enables the Service to estimate the total harvest of sandhill cranes.

The Sandhill Crane Harvest Survey enables us to annually estimate the magnitude of the harvest and the portion it constitutes of the total mid-continent sandhill crane population. Based on information from this survey, hunting regulations are adjusted as needed to optimize harvest at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

Title: Sandhill Crane Harvest Survey.

Approval Number: 1018–0023.

Service Form Number(s): 3–530, 3–530A, 3–2056N.

Frequency of Collection: Annually.

Description of Respondents: Individuals and households.

Number of Respondents: About 6,500 hunters will respond to the Sandhill Crane Harvest Survey annually.

Total Annual Burden Hours: The reporting burden is estimated to average 5 minutes per respondent. Total annual burden is 540 hours.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C 552(a)).

Dated: November 6, 2002.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 02–29290 Filed 11–18–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AI56

Fiscal Year 2002 Private Stewardship Grants Program; Proposal Due Date Extension

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; extension of the due date.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a due-date extension for submission of project proposals for Federal assistance under the fiscal year 2002 Private Stewardship Grants Program (PSGP). Project proposals must now be submitted to the appropriate Service Regional Office by January 15, 2003.

DATES: Project proposals must be received by the appropriate Regional Office (*see* Table 1 in **SUPPLEMENTARY INFORMATION**) no later than January 15, 2003.

ADDRESSES: For additional information contact the Service's Regional Office that has the responsibility for the State or Territory in which the proposed project would occur. The contact information for each Regional Office is listed in Table 1 under **SUPPLEMENTARY INFORMATION** below. Information on the PSGP is also available from the Branch of Recovery and State Grants, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 or electronically at *http://endangered.fws.gov/grants/private_stewardship.html* or e-mail: *Privatestewardship@fws.gov.*

To submit a project proposal send your project proposals to the Service's Regional Office that has the responsibility for the State or Territory in which the proposed project would occur (see Table 1 under **SUPPLEMENTARY INFORMATION**). You must submit one original and two copies of the complete proposal. We will not accept facsimile project proposals.

FOR FURTHER INFORMATION CONTACT: The Program Contact in the appropriate Regional Office identified in Table 1 under **SUPPLEMENTARY INFORMATION** or Martin Miller, Chief, Branch of

Recovery and State Grants (703/358–2061).

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2002, we published in the **Federal Register** (67 FR 61649) a notice announcing the final implementation guidelines and requesting proposals for the fiscal year 2002 Private Stewardship Grants Program. In that notice, we stated that project proposals must be received by the appropriate Regional Office by no later than December 2, 2002. In order to provide the public with additional time to become familiar with the program requirements and prepare proposals for this new program, we are now extending the due date for submission of project proposals under this program to January 15, 2003.

How To Apply for a PSGP Grant

You must follow the instructions in the October 1, 2002, **Federal Register** (67 FR 61649) document in order to apply for financial assistance under the PSGP. For a description of the information that must be included in a project proposal, please see ''The PSGP Project Proposal'' section in the October 1, 2002, **Federal Register** document. Your project proposal should not be bound in any manner and must be printed on one side only. You must submit one signed original and two signed copies of your project proposal (including supporting information). Your unbound (a binder clip is allowed) project proposal must now be received by the appropriate Regional Office listed in Table 1 by January 15, 2003. We encourage you to contact the Regional contact person listed in Table 1 prior to submitting a project proposal should you have questions regarding what information must be submitted with the project proposal. An incomplete proposal will not be considered for funding.

TABLE 1.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS

Service region	States or territory where the project will occur	Where to send your PSGP project proposal	Regional PSGP contact and phone no.
Region 1	Hawaii, Idaho, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands.	Regional Director U.S. Fish and Wildlife Service Eastside Federal Complex 911 N.E. 11th Avenue Portland, OR 97232–4181.	Heather Hollis (503/231–6241).
Region 1	California and Nevada	Office Manager U.S. Fish and Wildlife Service Federal Building, 2800 Cottage Way, Room W-2606 Sacramento, CA 95825–1846.	Miel Corbett (916/414–6464).
Region 2	Arizona, New Mexico, Oklahoma, and Texas.	Regional Director U.S. Fish and Wildlife Service 500 Gold Avenue SW., Room 4012 Albuquerque, NM 87102.	Susan MacMullin (505/248–6671).
Region 3	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	Regional Director U.S. Fish and Wildlife Service Bishop Henry Whipple Federal Building One Federal Drive Fort Snelling, MN 55111–4056.	Peter Fasbender (612/713–5343).
Region 4	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.	Regional Director U.S. Fish and Wildlife Service 1875 Century Boulevard, Suite 200 Atlanta, GA 30345.	Noreen Walsh (404/679–7085).
Region 5	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	Regional Director U.S. Fish and Wildlife Service 300 Westgate Center Drive Hadley, MA 01035–9589.	Diane Lynch (413/253–8628).
Region 6	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Regional Director U.S. Fish and Wildlife Service P.O. Box 25486 Denver Federal Center Denver, CO 80225–0486.	Pat Mehlhop (303/236–7400 ext. 225).
Region 7	Alaska	Regional Director U.S. Fish and Wildlife Service 1011 East Tudor Road, Anchorage, AK 99503–6199.	Susan Detwiler (907/786–3868).

Authority

This notice is published under the authority of the Department of the Interior and Related Agencies Appropriations Act, 2002, H.R. 2217/ Public Law 107–63.

Dated: October 31, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–29352 Filed 11–18–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(OR–120–5101 ER–H019) (2–0200)]

Notice of Availability for the Final Environmental Impact Statement (FEIS) on a Proposed Natural Gas Pipeline Right-of-Way

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of availability.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Coos Bay District, directed the preparation of an EIS by Biological Information Specialists, Inc., a third party contractor, on the impacts of a proposed natural gas pipeline from near Roseburg in Douglas County, Oregon, to Coos Bay in Coos County, Oregon. BLM received a right-of-way application from the Coos County Board of Commissioners, under Section 501 of the Federal Land Policy and Management Act of October 21, 1976, (43 U.S.C. 1737) on May 17, 2000. The proposed pipeline will cross approximately 60 miles of public and private lands in Coos and Douglas Counties, Oregon. This notice initiates the public review process on the FEIS. The public is invited to review and comment on the range and adequacy of the alternatives and associated environmental effects.

DATES: The FEIS will be distributed and made available to the public approximately November 19, 2002, for a 30-day review period. Copies of the FEIS will be mailed to individuals, agencies, or companies who previously requested copies or who responded to the Bureau of Land Management on the Draft EIS. No decisions on the proposed action shall be made until at least 30 days after publication of a Notice of Availability by the Environmental Protection Agency (EPA).

ADDRESSES: Written comments should be sent to Bob Gunther, Project Coordinator, Coos Bay District, BLM, 1300 Airport Lane, North Bend, OR 97459. Documents pertinent to this proposal may be examined at the Coos Bay District Office in North Bend, Oregon and local libraries. The FEIS will also be available electronically at the BLM Coos Bay District Web site (*http://www.or.blm.gov/coosbay*) and the Coos County web site (*http://www.co.coos.or.us*). Comments, including names and street addresses of respondents, will be available for public review at the Coos Bay District Office during regular business hours 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Bob Gunther, Project Coordinator, at address above or telephone (541–751–4295), fax: 541–751–4303, or e-mail comments to the attention of *Bob_Gunther@or.blm.gov.* For Technical Information contained in the EIS contact Melanie Little, Biologist, Biological Information Specialists, Inc., P.O. Box 27, Camas Valley, Oregon 97416, Telephone: (541) 445–2008.

SUPPLEMENTARY INFORMATION: The Coos County Board of Commissioners has applied for a right-of-way proposing to contract construction of a 12-inch natural gas transmission pipeline to be buried within the existing rights-of-ways of the Pacific Corp. (PP&L) and Bonneville Power Administration (BPA) electric transmission lines, and within the existing roadbed of the Coos Bay Wagon Road. The total length of the pipeline is approximately 60 miles, with approximately 3.0 miles located on lands administered by the BLM. The proposed pipeline would connect to the Williams Gas Pipeline at a meter facility southwest of Roseburg, in or near Section 33 Township 27 South, Range 6 West in Douglas County and would terminate at Ocean Boulevard in the city of Coos Bay (Section 27 Township 25 South, Range 13 West).

The natural gas transmission pipeline will deliver gas to distribution facilities built by Northwest Natural Gas in the communities of Coos Bay and North Bend. Smaller 6-inch or 4-inch laterals will be built off the mainline to serve the cities of Coquille, Myrtle Point, and perhaps Bandon at a later date. The location of the laterals has not been finalized, but they are anticipated to follow the location of existing powerline, State highway, or railroad rights-of-way. Locations of the distribution lines within the city limits are not known at this time, but are anticipated to be located within existing road rights-of-way.

The proposed pipeline will fall under the jurisdiction of U.S. Department of Transportation (DOT), as a natural gas transmission pipeline. It will be built and operated to all current specifications in 49 CFR Part 192 (Natural Gas Pipelines) and other relevant sections. The Oregon Public Utility Commission will administer DOT Pipeline Safety regulations for this pipeline.

The proposed pipeline will be designed with the appropriate design safety factors. The mainline is proposed as a welded steel pipeline with a Maximum Allowable Operating Pressure (MAOP) of 1,000 pounds per square inch (psi). The finished pipeline will be pressure tested to at least 150% of MAOP, to detect leakage or failure.

All construction will be done during daylight hours. Mainline construction will take about 6 months. Applicant plans to construct in the relatively dry summer months of April through October.

Pipeline construction will require a working space up to 60 feet wide. DOT requires a minimum of 30″ of cover in normal soils, 18″ in consolidated rock, 36″ under roads. The pipe will be installed to a target depth of 48″ to top of pipe. Some grading will be required to install the pipe, but shall be substantially restored to original grade before revegetation. All earth disturbance operations shall be subject to an erosion control plan to comply with U.S. Environmental Protection Agency (EPA) guidelines.

In sections along electrical transmission lines, the contractor shall be required to have and follow a plan to continuously ground the pipe, to protect workers from shock from induced currents.

Coos County plans to contract pipeline operations with an experienced pipeline operator. The County and its operator are required under DOT to formulate and use an Operations and Maintenance Plan specifically for this pipeline. The Operations and Maintenance Plan will include an Emergency Plan for specific procedures

and notifications in case of an emergency.

Coos County plans to provide cathodic protection against corrosion, as required by DOT. Magnesium anodes will be placed at regular intervals along the pipeline, to sacrificially corrode and protect the coated steel pipe. This method normally mitigates most induced alternating current (AC). In sections near electrical transmission lines, supplemental anodes and other measures will be taken as necessary to minimize induced AC on the pipeline.

Long-term pipeline operation will require approximately 40 feet of space to be kept clear of larger brush and trees. Access roads to the BPA corridor will be restored as needed for pipeline construction and access for Operations and Maintenance.

After the initial pipeline construction period, there is no need to ever excavate any particular segment of pipe. Annual maintenance consists of checking depth of pipe in roadways, repairing any soil erosion, controlling brush, replacing line markers, painting and operating block valves, conducting leak surveys, and checking the effectiveness of the corrosion control system.

The Draft EIS was issued in December 2001. EPA published its Notice of Availability on January 25, 2002, with the formal public comment period closing on March 25, 2002. Thirty-nine comment letters were received. Comments have been analyzed, and appropriate changes have been made in the FEIS. Public comments have been summarized and printed in the FEIS along with BLM's responses.

A Notice of Availability for the Record of Decision on the project will be published at a later date.

Mark E. Johnson,

Acting District Manager.

[FR Doc. 02–29098 Filed 11–18–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement\General Management Plan Santa Monica Mountains National Recreation Area Los Angeles and Ventura Counties, CA; Notice of Availability

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service, Department of the Interior, has prepared a final environmental impact statement assessing the potential impacts of the proposed General Management Plan (GMP) for Santa Monica Mountains National Recreation Area. This conservation planning and environmental impact analysis effort to date has identified and analyzed five alternatives (and appropriate mitigation strategies) for the management and use of the Santa Monica Mountains National Recreation Area over the next 15 to 20 years.

Proposal and Alternatives: The final environmental impact statement (FEIS) includes five alternatives, including the ''no action'' (existing conditions) alternative. The No Action Alternative assumes that physical facilities would remain largely unchanged and staffing and operational funding would remain relatively constant over the next 15 to 20 years. The Preferred Alternative incorporates the exceptional elements of all of the alternatives to provide protection of significant natural and cultural resources while promoting compatible recreation and educational opportunities. The Preservation Alternative emphasizes the preservation of all-natural and cultural systems and removing some park-related development. Virtual media and exhibits would provide visitors with alternative experiences and information. Visitor disturbance would be reduced while visitor appreciation for the resource would increase. The Education Alternative would promote strong environmental and cultural education programs that reach the public and especially the school systems. The Recreation Alternative maximizes recreation with any new park development in non-sensitive areas.

Background: A notice of intent to prepare an EIS was published by the National Park Service (NPS) in the **Federal Register** on August 19, 1997. During the subsequent scoping phase leading to the development of the Draft EIS, Newsletter One was sent out in September 1997 (and included a comment form). This newsletter, available in English and Spanish, was direct mailed as well as posted on the internet. The NPS, California State Parks and the Santa Monica Mountains Conservancy then jointly conducted seven public meetings in Los Angeles and Ventura Counties, and one meeting with representatives from at least 60 public and municipal entities and the tribes. In December 1997, Newsletter Two summarizing those comments was distributed (again with a comment form). Newsletter Three was distributed in June 1998, presenting the alternatives. Nine public meetings were held to solicit comments, and 200 comments were received. A notice of availability of the Draft EIS\GMP was published in the **Federal Register** on December 14, 2000. The document was available for public review for an extended comment period through May 31, 2001. The NPS received approximately 600 written responses and many oral comments from the five additional public meetings conducted in February 2001 in Los Angeles and Ventura County. All of these comments were duly considered in preparing the Final EIS\GMP. All comments obtained are preserved in the administrative record.

ADDRESSES: Copies of the Final EIS\GMP are available from the Superintendent, Santa Monica Mountains National Recreation Area, 401 West Hillcrest Drive, Thousand Oaks, California 91360 (telephone is (805) 370–2300). In addition the document is posted on the internet at *www.nps.gov/samo.* Public reading copies will also be available at public libraries in Los Angeles and Ventura Counties, and at the NPS Office of Public Affairs, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240; Telephone: (202) 208–6843.

If individuals responding to this notice request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of such responses. There may also be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and business; and, anonymous comments may not be considered.

Decision: A Record of Decision may be approved by the Regional Director, Pacific West Region, no sooner than 30 days after the publication by the Environmental Protection Agency of the notice of filing of this Final EIS\GMP in the **Federal Register**. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation of the GMP is the Superintendent, Santa Monica Mountains National Recreation Area.

Dated: October 3, 2002.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 02–29341 Filed 11–18–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement/ General Management Plan, Minidoka Internment National Monument, Jerome County, ID; Notice of Extension oF Public Scoping Period

SUMMARY: In accord with § 102(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), the National Park Service is undertaking a conservation planning and environmental impact analysis process for the first General Management Plan (GMP) for the Minidoka Internment National Monument, Idaho. An Environmental Impact Statement will be prepared concurrently with the GMP. The GMP is intended to set forth the basic management philosophy for this new unit of the National Park System and provide strategies for addressing issues and achieving identified management objectives for that unit, thus serving as a ''blueprint'' to guide management of natural and cultural resources and visitor use during the next 15–20 years. The notice of intent initiating scoping for this effort was published in the **Federal Register** on April 24, 2002, with the original public scoping period set to conclude on September 30, 2002. In an effort to comprehensively involve all interested parties and to solicit additional concerns and information about management issues that should be addressed, the scoping period has been extended through December 2002.

SUPPLEMENTARY INFORMATION: All individuals, organizations, agencies, American Indian tribes, and other interested parties with information pertinent to preparation of the GMP are encouraged to contact the Superintendent, Minidoka Internment National Monument. To be considered, comments must be postmarked or transmitted no later than December 31, 2002.

Comments: As part of this comprehensive public involvement effort, the National Park Service anticipates holding public scoping meetings in Idaho, Oregon, and Washington, during the month of November 2002. Details of these meetings will be announced widely in local and regional news media, via direct park mailings, and posted on the park's Web site (see below). All responses should be submitted directly to the Superintendent, Minidoka Internment National Monument, P.O. Box 570, 221 North State Street, Hagerman, Idaho 83332. Emailed comments should be sent to *MIIN_GMP@nps.gov.* Current information is available at (208) 837–4793 or *www.nps.gov/miin/.*

All comments received will become part of the public record. If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always, NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Dated: September 26, 2002.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 02–29342 Filed 11–18–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of data collection submission.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before December 19, 2002. OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

ADDRESSES: Comments on this information collection should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington DC 20503. A copy of your comments should also be directed to the Bureau of Reclamation, Attention Mr. Jeffrey Addiego, Boulder Canyon Operations Office, PO Box 61470, Boulder City, NV 89006–1470.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed collection of information, contact Mr. Jeffrey Addiego, (702) 293–8525, or e-mail at *JAddiego@lc.usbr.gov*.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have practical use; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Title: Lower Colorado River Well Inventory.

OMB No.: Extension of 1006–0014.

Description of respondents: All diversions of mainstream Colorado River water along the lower Colorado River must be accounted for and, for non-Indian diverters, in accordance with a water use contract with the Secretary of the Interior. Each diverter (including well pumpers) must be identified and their diversion locations and water use determined. This requires an inventory of wells along the lower Colorado River and the gathering of specific information concerning each well.

Frequency: These data will be collected only once for each well owner or operator as long as changes in water use, or other changes that would impact contractual or administrative requirements, are not made.

Estimated completion time: An average of 30 minutes is required for Reclamation to interview individual well owners or operators. Reclamation will use the information collected during these interviews to complete the information collection form.

Annual responses: 1,000.

Annual burden hours: 500 hours.

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. Reclamation will display a valid OMB control number on the forms.

A Federal Register notice with a 60-day comment period soliciting comments on this collection of

information was published on August 12, 2002 (67 FR 52499). No comments were received.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Gary Palmeter,

Manager, Property and Office Services Division.

[FR Doc. 02–29286 Filed 11–18–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF LABOR

Office of the Secretary of Labor

Notice of Meeting: President's Council on the 21st Century Workforce and the Committees on Skills Gap, Demographics and Workplace Issues

AGENCY: Office of the Secretary of Labor.

ACTION: Notice of meeting of the President's Council on the 21st Century Workforce and meeting of Committees.

SUMMARY: Pursuant to Executive Order 13218, the Secretary of Labor will hold a meeting of the President's Council on the 21st Century Workforce, hereafter (The Council). This is the second meeting of The Council and its Committees on the Skills Gap, Changing Demographics, and Workplace Issues. The Council and Committees will provide information and advice to the President, through the Secretary of Labor and the Office of the 21st Century Workforce, on issues guided by Executive Order 13218.

DATE, TIME AND LOCATION: The Council and the Committees will meet on November 21, 2002 from 8:30 a.m. to approximately 2 p.m. The location of the meeting will be the Secretary's Conference Room, U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Shelley Hymes, Director, Office of the 21st Century Workforce, U.S. Department of Labor, Room S–2235, 200 Constitution Avenue, NW., Washington, DC 20210. The contact telephone number is (202) 693–6490.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The agenda for this meeting includes:

- Welcome and remarks by U.S. Secretary of Labor Elaine L. Chao
- Welcome and remarks by the Director of the Office of the 21st Century Workforce
- Briefing by Department of Labor (DOL) Officials;
- Committee meeting on the Skills Gap, Changing Demographics and Workplace Issues

An official record of the meeting will be available for public inspection in the Office of the 21st Century Workforce. All inquiries should be addressed to the Office of the 21st Century Workforce at the address and telephone number provided above.

Individuals needing special accommodations for the Council or Committee meeting should contact Shelley Hymes at 202–693–6490 before November 19, 2002.

Interested parties may submit written data, views or comments, preferably 20 copies, to Shelley Hymes at the address listed above. The Office of the 21st Century Workforce will forward submissions received prior to the meeting to the appropriate Council or Committees and will include each submission in the record of the meeting.

Due to unforeseen administrative delay, we are unable to provide the full 15 days of advanced notice of this meeting.

Dated: Signed in Washington DC on November 14, 2002.

Shelley S. Hymes,

Director, Office of the 21st Century Workforce.

[FR Doc. 02–29432 Filed 11–18–02; 8:45 am]

BILLING CODE 4510–23–M

LEGAL SERVICES CORPORATION

Rulemaking Protocol

AGENCY: Legal Services Corporation.

ACTION: Announcement of adoption of revised rulemaking protocol.

SUMMARY: This notice sets forth the text of a revised rulemaking protocol adopted by the LSC Board of Directors which will govern LSC rulemaking activites.

DATES: This Rulemaking Protocol became effective upon its adoption at the LSC Board of Directors Meeting on November 9, 2002.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE., Washington, DC 20002–4250; 202/336–8817 (phone); 202/336–8952 (fax); *mcondray@lsc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Legal Services Corporation is authorized by Congress to issue regulations as necessary to carry out its mission. *See* 42 U.S.C. 2996(e). LSC, however, is not a ''department, agency, or instrumentality of the Federal Government.'' 42 U.S.C. 2996(d). As such, LSC is not subject to the requirements of the Administrative Procedures Act, which governs the rulemaking activities of Federal agencies. Rather, LSC is required to ''afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines, and it shall publish in the **Federal Register** at least 30 days prior to their effective date all its rules, regulations, guidelines and instructions.'' 42 U.S.C. 2999(g).

Throughout its history, LSC has conducted its rulemaking in compliance with the statutory requirements described above, but has not had a written statement of the Board of Directors (''Board'') setting forth the procedures to be followed in the course of LSC rulemaking activities. The Board determined that, while there is no legal requirement for LSC to have a written protocol related to rulemaking, having one would serve to advance LSC's policy of conducting its rulemaking activities in a spirit of cooperative dialog with our recipients and other interested parties. Accordingly, on September 18, 2000, at a meeting of its Board of Directors, the Legal Services Corporation adopted a new Rulemaking Protocol to govern its rulemaking activities.

At its September 2002 meeting, the Board discussed how the Rulemaking Protocol and how rulemaking has proceeded under the Protocol, citing concerns over cost of the Negotiated Rulemakings being undertaken while endorsing the collaborative rulemaking approach promoted by the Protocol. The Board requested that staff provide at the next meeting a report detailing experience with the Rulemaking Protocol, to date, and recommending changes, as necessary to improve the Protocol. The requested report, including proposed changes to the

Protocol was provided and taken up by the Board at it meetings on November 8–9, 2002. The Board adopted the proposed revised Protocol, with some minor amendments. The text of the Protocol, as revised, is set forth below.

It should be noted that, since this Protocol is a statement of LSC internal procedure and is not a ''rule, regulation, guideline or instruction,'' LSC is not required by law to publish this Protocol or seek public comment. LSC is choosing to publish this Protocol in the **Federal Register** (and has also posted it on the LSC website at *http:\\www.lsc.gov*) in furtherance of LSC's interest in and policy of conducting its business in a fair and open manner.

LSC Rulemaking Protocol (as Revised by the LSC Board of Directors 11/9/02)

This Rulemaking Protocol is intended to reflect the policy of LSC to conduct its rulemaking activities in a spirit of cooperative dialog with our recipients and other interested parties [1] and has the following six objectives:

1. Enhanced implementation of the will of Congress as expressed in the LSC Act, amendments thereto and other statutory enactments;
2. Increased public participation in the manner and method in which LSC promulgates rules;
3. The adoption of procedures that reflect the best practices in rulemaking as articulated in the Administrative Procedures Act, the Negotiated Rulemaking Act of 1990 and Executive Order 12866;
4. Implementation of LSC's strategic initiatives as set forth in Strategic Directions, 2000–2005 (adopted January 29, 2000);
5. Formalization of LSC's policies governing rulemaking and specifically reserving specific responsibilities and authorities unto the Board; and
6. Development of a rulemaking protocol that is efficient and effective.

Regulatory Policy Direction

The Board, through the Operations and Regulations Committee (''Committee''), provides direction on LSC regulatory policy and establishes priorities for LSC rulemaking activities. The Committee will look to staff to effectuate LSC rulemaking policies and priorities through this Protocol. Final authority over LSC rulemaking policies and actions rests with the Board.

Initiation of Rulemaking

The impetus for a rulemaking [2] may come from any one of several sources; Congressional directive; internal LSC initiative (Board or Committee members and/or staff); or a formal request from a member of the regulated community or general public. Decisions on whether to undertake rulemakings will be made by the Board upon the recommendation of the Committee.

In most instances,[3] prior to undertaking a rulemaking LSC's Office of Legal Affairs (''OLA''), in close consultation with appropriate Corporation staff, will develop a Rulemaking Options Paper (''ROP''). The ROP will contain a discussion of the subject for the potential rulemaking, and will include an outline of the policy and legal issues involved. The ROP shall also recommend whether the potential rulemaking should be accomplished by Notice and Comment Rulemaking, including whether holding a Rulemaking Workshop would be appropriate, or whether it should be Negotiated.

Once the ROP is developed and approved by the LSC President, it will be submitted to the Committee. The Committee will have the opportunity to deliberate and determine whether to recommend to the Board that the Board initiate a rulemaking. If the Committee recommends that the Board initiate a rulemaking, the Committee deliberations will also provide an opportunity for the Committee to recommend policy direction on the scope and issues expected to be involved in the rulemaking. As noted above, the Board will make decisions regarding whether to undertake a rulemaking, the method to be used for the rulemaking, and any policy direction to be given to staff at the outset. The appropriate rulemaking process shall be selected on a case-by-case basis consistent with the objectives of this Protocol.

If the Board decides to undertake a rulemaking, notice that a rulemaking proceeding has begun will be posted on the LSC website, indicating the subject matter of the rulemaking and whether the rulemaking will be accomplished through Notice and Comment, including whether the Corporation anticipates holding a Rulemaking Workshop, or be Negotiated. In addition to website notice, notice by mail will also be given those who have previously requested such notice and are included in the Corporation's mailing list dedicated to that purpose.

Notice and Comment Rulemaking; Rulemaking Workshops

In Notice and Comment Rulemaking, LSC develops rulemaking proposals and receives comment on them in writing and at certain publicly designated meetings of the Committee. As an adjunct to the Notice and Comment Process, LSC will, when appropriate, conduct Rulemaking Workshops. Rulemaking Workshops will enable LSC Board members and staff to meet with stakeholders prior to the development of a draft NPRM to discuss, but not negotiate, LSC rules and regulations. LSC believes the Notice and Comment process, including Rulemaking Workshops, will allow for an effective dialog between LSC and its recipients and other interested parties, in those instances in which Negotiated Rulemaking is not used.

When the Board has decided to initiate a rulemaking and to conduct a Rulemaking Workshop, OLA will work with the Board and staff to select a date for the Rulemaking Workshop and will invite participants from the interested stakeholder community. The Workshop will be a meeting at which the participants hold open discussions designed to elicit information about problems or concerns with the regulation (or certain aspects thereof) and provide an opportunity for sharing ideas regarding how to address those issues. The Workshop is not intended to develop detailed alternatives or to obtain consensus on regulatory proposals. Upon the conclusion of the Workshop, the Board shall provide LSC staff with policy guidance on the issues discussed to aid staff in the development of the Draft Notice of Proposed Rulemaking (''NPRM'').

OLA will have the primary responsibility for the drafting of the Draft NPRM, which includes both the proposed regulatory text and the proposed preamble, working with management, appropriate staff and the Office of Inspector General (''OIG''). The Draft NPRM will be shared with the OIG for review and comment. The Draft NPRM will be submitted to the President. The President may then approve the Draft NPRM for submission to the Committee for its consideration or return the Draft NPRM to OLA for revisions as necessary.

Once approved, the Draft NPRM will be set for consideration by the

[1] Although this Protocol reflects LSC policy, it is not intended to and shall not create or confer any rights for or on behalf of any person or party and shall not establish legally enforceable rights against LSC or establish any legally enforceable obligations on the part of LSC, its directors, officers, employees and other agents.

[2] Rulemaking includes both the development of new rules and regulations and the amendment of existing rules and regulations.

[3] The Committee and the Board retain the authority to initiate a rulemaking whether or not a ROP has been prepared. The ROP process is intended to aid the Committee and the Board in their respective deliberations and decisionmaking process.

Committee at a public meeting. The Draft NPRM will be provided to the Committee sufficiently in advance of the meeting to permit appropriate consideration. The notice of the meeting announcing the placement of the Draft NPRM on the Committee agenda will be published in the **Federal Register** and will recite that the Draft NPRM will be publicly available and will be posted on the LSC Web site. In addition, the Draft NPRM will be distributed to each participant in the Rulemaking Workshop, if one has been held. Posting of the Draft NPRM to the LSC Web site and distribution to Workshop participants will be made upon distribution of the Draft NPRM to the Committee and sufficiently in advance of the Committee meeting to permit appropriate consideration by interested parties.

At the Committee meeting, management will present the Draft NPRM with the assistance of OLA and opportunity for public comment will be provided. The Committee will then deliberate and shall decide whether to publish the NPRM, return it to staff for revisions, or recommend to the Board that the Board terminate the rulemaking.

Once the NPRM has been approved, OLA will make any necessary technical revisions to document before it is published in the **Federal Register** for comment.[4] The comment period will be at least 30 days and, it is anticipated, in most instances will be 60 days (but could, under appropriate circumstances, be longer). However, the decision as to whether to limit the notice period to 30 days or to provide a longer comment period is a matter entirely within discretion of the Board.

Copies of all comments received will be provided to the Committee and made available to other Board Members upon request. Copies of all comments will also be placed in a public docket available for inspection and copying in the FOIA Reading Room at the Corporation's offices. Copies of comments received in electronic format, along with an index of all comments received, will be placed into an electronic docket on the LSC website.

Upon the close of the comment period, OLA will draft a Final Rule (which consists of the regulatory text and preamble).[5] The draft of the Final Rule will be shared with the OIG for review and comment. The draft of the Final Rule will be submitted to the President. The President may then approve the draft of the Final Rule for submission to the Committee for its consideration or return it to OLA for revisions as necessary.

Once approved, the draft of the Final Rule will be set for consideration by the Committee at a public meeting. The draft of the Final Rule will be provided to the Committee and the Board sufficiently in advance of the meeting to permit appropriate consideration. In addition, a notice of the meeting announcing the placement of the Final Rule on the Committee agenda will be published in the **Federal Register**. At the Committee meeting, management will present a summary of the Comments and the draft Final Rule with the assistance of OLA. It is anticipated that the Committee will accept public comment as needed to assist in its deliberations. The Committee will vote on whether to recommend the Final Rule to the Board, return it to staff for revisions, or recommend that the Board terminate the rulemaking.

If the draft Final Rule is approved by the Committee for review by the Board, the Board will consider the draft Final Rule and vote to adopt it, to return it to the Committee for further action, or to terminate the rulemaking. At its discretion, the Board may request the participation of members of the public during its deliberations. Once the Final Rule is adopted by the Board, OLA will make any necessary technical revisions to it and submit the final version for approval for publication to the Board's designee (for example, the Board Chair or the Committee Chair). The Final Rule will then be published in the **Federal Register** and placed on LSC's Web site.

Negotiated Rulemaking

In a Negotiated Rulemaking, a group comprised of LSC representatives and affected and/or interested parties will meet under the direction of a trained, neutral facilitator, (''Working Group'') with the intention of developing consensus-based positions leading to regulations. The key feature of Negotiated Rulemaking is its collaborative approach, which seeks consensus where possible and decisionmaking by LSC after full dialog with the regulated community and other interested parties. LSC intends to use negotiated rulemaking in instances in which LSC believes that the Notice and Comment process, including the use of Rulemaking Workshops, will not suffice and that the Negotiated Rulemaking process is necessary to properly address complex and/or controversial issues posed by the rulemaking.

The President, in consultation with the Committee Chair, will solicit suggestions for appointment to the Working Group from the regulated community, its clients, advocates, the organized bar and other interested parties. The President, working in consultation with the Committee, acting through its Chair, will make appointments of individuals and organizations to the Working Group, including the facilitator and the OLA representative. Working Groups will have no more than 15 members, representing the diversity of the legal services community and other interested parties. All groups or organizations asked to participate in a Working Group shall be responsible for selecting and designating their representatives. No members will be appointed to a Working Group after the Working Group had held its first meeting.

The Working Group shall meet as necessary to develop a draft NPRM. The members of the Working Group will, drawing upon their substantive expertise, discuss the subjects prompting the need for rulemaking and work toward developing a consensus on solutions to the problems identified. During this process, staff will provide detailed status reports to the Committee during Committee meetings, including briefings on the substance of tentative areas of consensus and disagreement in order to provide the Committee with an opportunity to provide additional policy guidance to LSC staff (and other Working Group members in attendance at the Committee meeting) at that time.

The OLA representative on the Working Group, with the assistance of a subgroup of the membership, shall draft the regulatory language consistent with achieved consensus. The Working Group will review the regulation to ensure it reflects any consensus reached, although the Corporation retains ultimate responsibility for crafting the regulatory language.

The consensus proposal of the group, once developed, must go through the formal rulemaking process as an NPRM. At this point the Notice and Comment process described above will be followed.

On occasion it may happen that no consensus can be reached by the Working Group on a regulatory proposal or some element thereof. In those instances, the President will report this to the Committee and seek direction from the Committee, acting through its Chair, on whether to continue the rulemaking using the Notice and

[4] During the comment period, LSC may, in its discretion, hold a public hearing at which interested parties make oral presentations, followed by written comments.

[5] On rare occasions, it may become necessary for LSC to raise additional issues for comment. In such a case, LSC may issue a Revised NPRM and repeat the comment process.

Comment process or to terminate the rulemaking.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 02–29231 Filed 11–18–02; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before December 19, 2002 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on August 28, 2002 (67 FR 55277 through 55279). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Court Order Requirements.

OMB number: 3095–0038.

Agency form number: NA Form 13027.

Type of review: Regular.

Affected public: Veterans and Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 5,000.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 1,250 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT), the NPRC also administers military service records of veterans after discharge, retirement, and death, and the medical records of these veterans, current members of the Armed Forces, and dependents of Armed Forces personnel. The NA Form 13027, Court Order Requirements, is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law and (2) the information to be provided so that records may be identified.

2. *Title:* Forms Relating to Military Service Records.

OMB number: 3095–0039.

Agency form number: NA Forms 13036, 13042, 13055, and 13075.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 79,800.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel, military medical, and dependent medical record).

Estimated total annual burden hours: 6,650 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT, U.S. Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military personnel and medical records of veterans after discharge, retirement, and death. In addition, NRPC administers the medical records of dependents of service personnel. When veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records, they must provide on forms or in letters certain information about the veteran and the nature of the request. A major fire at the NPRC on July 12, 1973, destroyed numerous military records. If individuals' requests involve records or information from records that may have been lost in the fire, requesters may be asked to complete NA Form 13075, Questionnaire about Military Service, or NA Form 13055, Request for Information Needed to Reconstruct Medical Data, so that NPRC staff can search alternative sources to reconstruct the requested information. Requesters who ask for medical records of dependents of service personnel and hospitalization records of military personnel are asked to complete NA Form 13042, Request for Information Needed to Locate Medical Records, so that NPRC staff can locate the desired records. Certain types of information contained in military personnel and medical records are restricted from disclosure unless the veteran provides a more specific release authorization than is normally required. Veterans are asked to complete NA Form 13036, Authorization for Release of Military Medical Patient Records, to authorize release to a third party of a restricted type of information found in the desired record.

3. *Title:* Military Personnel Records (MPR) Customer Satisfaction Survey.

OMB number: 3095–0042.

Agency form number: N/A.

Type of review: Regular.

Affected public: Federal, state and local government agencies, veterans, and individuals who write the Military Personnel Records (MPR) facility for information from or copies of official military personnel files.

Estimated number of respondents: 4,960.

Estimated time per response: 10 minutes.

Frequency of response: On occasion (when respondent writes to MPR requesting information from official military personnel files).

Estimated total annual burden hours: 827 hours.

Abstract: The information collection is prescribed by EO 12862 issued September 11, 1993, which requires Federal agencies to survey their customers concerning customer service. The general purpose of this data collection is to initially support the business process reengineering (BPR) of the MPR reference service process and then provide MPR management with an ongoing mechanism for monitoring customer satisfaction. In particular, the purpose of the Military Personnel Records (MPR) Customer Satisfaction Survey is to (1) provide baseline data concerning customer satisfaction with MPR's reference service process, (2) identify areas within the reference service process for improvement, and (3) provide MPR management with customer feedback on the effectiveness of BPR initiatives designed to improve customer service as they are implemented. In addition to supporting the BPR effort, the Military Personnel Records (MPR) Customer Satisfaction Survey will help NARA in responding to performance planning and reporting requirements contained in the Government Performance and Results Act (GPRA).

Dated: November 13, 2002.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 02–29297 Filed 11–18–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collections; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public.

DATES: Comments will be accepted until January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0143.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: 12 CFR part 760 Loans in Areas Having Special Flood Hazards.

Description: Federally insured credit unions are required by statute and by proposed 12 CFR part 760 to file reports, make certain disclosures and keep records. Borrowers use this information to make valid purchase decisions. The NCUA uses the records to verify compliance.

Respondents: All federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 5,500.

Estimated Burden Hours Per Response: 7 minutes.

Frequency of Response: Recordkeeping and on occasion.

Estimated Total Annual Burden Hours: 101,333.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 14, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–29365 Filed 11–18–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collections; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public.

DATES: Comments will be accepted until January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0142.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: 12 CFR 741.6 (c) Requirements for Insurance.

Description: Credit Unions that submit late or inaccurate call reports are required to submit a proposal that describes how it will avoid another late or inaccurate report.

Respondents: Federally insured credit unions.

Estimated No. of Respondents/ Recordkeepers: 630.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Reporting and on occasion.

Estimated Total Annual Burden Hours: 1,260.

Estimated Total Annual Cost: $21,186.60.

By the National Credit Union Administration Board on November 14, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–29366 Filed 11–18–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov*.

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

It is also available on the following Web site: *www.NCUA.gov*.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0129.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Corporate Credit Unions.

Description: Part 704 of NCUA's Rules and Regulations direct corporate credit unions to maintain records concerning their activities.

Respondents: Corporate credit unions.

Estimated No. of Respondents/Record keepers: 34.

Estimated Burden Hours Per Response: 153 hours.

Frequency of Response: Reporting, recordkeeping, on occasion and annually.

Estimated Total Annual Burden Hours: 70,142 hours.

Estimated Total Annual Cost: $2,248.

By the National Credit Union Administration Board on November 14, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–29367 Filed 11–18–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov*.

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447. It is also available on the following Web site: *www.NCUA.gov*.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0068.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: 12 CFR 701.31 Non Discrimination Policy.

Description: This regulation requires a federal credit union (FCU) to keep a copy of the property appraisal. It also requires that a FCU using geographical factors in evaluating real estate loan applications must disclose such facts on the appraisal and state for justification. This regulation insures compliance with the Fair Housing anti-redlining requirements.

Respondents: Federal Credit Unions.

Estimated No. of Respondents/Record Keepers: 4,000.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Recordkeeping on occasion.

Estimated Total Annual Burden Hours: 4,000.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 14, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–29368 Filed 11–18–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request.

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, FaxNo. 703–518–6489, E-mail: *mcnamara@ncua.gov*.

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of

Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447. It is also available on the following Web site: *www.NCUA.gov*.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0032.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Records Preservation. Part 749 of NCUA Regulations directs each credit union to store copies of their members' share and loan balances away from the credit union's premises.

Respondents: All credit unions.

Estimated No. of Respondents/Record keepers: 9,984.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Quarterly.

Estimated Total Annual Burden Hours: 19,968.

Estimated Total Annual Cost: $998,400.

By the National Credit Union Administration Board on November 14, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–29369 Filed 11–18–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov*.

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

It is also available on the following Web site: *www.NCUA.gov*.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0141.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: 12 CFR 701.22 Organization and Operation of Credit Unions.

Description: NCUA has authorized federal credit unions to engage in loan participations, provided they establish written policies and enter into a written loan participation agreement. NCUA believes written policies are necessary to ensure a plan is fully considered before being adopted by the Board.

Respondents: All Federal Credit Unions.

Estimated No. of Respondents/Record keepers: 1,000.

Estimated Burden Hours Per Response: 4 hours.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 4,000.

Estimated Total Annual Cost: $100,000.

By the National Credit Union Administration Board on November 14, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–29370 Filed 11–18–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447. It is also available on the following Web site: *http://www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0057.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: FCU Recordkeeping of Meeting Minutes and Other Documents.

Description: The Federal Credit Union Act and NCUA's Federal Credit Union Bylaws require each federal credit union to prepare and maintain minutes of its board and member meetings and copies of other important documents and election results. In addition, the board's secretary must inform the NCUA Board of any address change of a federal credit union.

Respondents: Federal credit unions.

Estimated No. of Respondents/Record keepers: 6,118.

Estimated Burden Hours Per Response: 4 hours.

Frequency of Response: Recordkeeping and reporting on occasion and annually.

Estimated Total Annual Burden Hours: 21,107.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on November 14, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–29371 Filed 11–18–02; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power Corporation (the licensee) to withdraw its August 14, 2002, application for proposed amendment to Facility Operating License No. DPR–72 for Crystal River, Unit No. 2, located in Citrus County, Florida.

The proposed amendment would have revised the Technical Specifications pertaining to two inoperable control complex chillers.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 6, 2002 (67 FR 57042). However, by letter dated October 24, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 14, 2002, and the licensee's letter dated October 24, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of November 2002.

For the Nuclear Regulatory Commission.

Ram Subbaratnam,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–29327 Filed 11–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Future Plant Designs; Canceled

The meeting of the ACRS Subcommittee on Future Plant Designs scheduled to be held on November 21, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland, has been canceled due to the unavailability of documents. Notice of this meeting was published in the **Federal Register** on Monday, November 4, 2002 (67 FR 67218).

FOR FURTHER INFORMATION CONTACT: Dr. Medhat M. El-Zeftawy (telephone 301–415–6889) between 7:30 a.m. and 5 p.m. (EST) or by e-mail *MME@NRC.gov*

Dated: November 13, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–29326 Filed 11–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of November 18, 25, December 2, 9, 16, 23, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 18, 2002

Thursday, November 21, 2002

10 a.m.—Briefing on Proposed Rulemaking to Add New Section 10 CFR 50.69, ''Risk-Informed Caterogization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors'' (Public Meeting) (Contract: Eillen McKenna, 301–415–2189, or Timothy Reed, 301–415–1462)

This meeting will be webcast live at the Web address—*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—*www.nrc.gov*.

Week of December 23, 2002—Tentative

There are no meetings scheduled for the Week of December 23, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: November 14, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–29487 Filed 11–15–02; 2:32 pm]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Performance of Commercial Activities

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Proposed revision to Office of Management and Budget Circular No. A–76, ''Performance of Commercial Activities.''

SUMMARY: The Office of Management and Budget (OMB) proposes major revisions to Circular No. A–76 to improve the management of commercial activities that are needed to conduct the business of government. The revisions would expand the use of public-private competitions to all activities performed in-house and through commercial inter-service support agreements (ISSAs). The revisions would also incorporate principles of the Federal Acquisition Regulation (FAR) into the competitive sourcing process, including the ability to conduct an expanded best value cost-technical trade-off source selection process. In addition, the revisions would provide guidance for the development of inventories identifying the commercial and inherently governmental activities agencies perform, and prescribe limitations regarding the reimbursable services federal agencies may provide to state and local governments.

To accomplish these changes, OMB is proposing to revise and incorporate the following documents into the revised Circular A–76: the ''Revised Supplemental Handbook to OMB Circular A–76'' (March 1999); OMB Circular A–76 Transmittal Memoranda Nos. 1–24; Office of Federal Procurement Policy (OFPP) Policy Letter 92–1, ''Inherently Governmental Functions''; and OMB Circular A–97, ''Provision of Specialized or Technical Services to State and Local Units of Government by Federal Agencies Under Title III of the Intergovernmental Cooperation Act of 1968.'' The Revised Supplemental Handbook to Circular A–76 (hereafter ''Supplemental Handbook''), OFPP Policy Letter 92–1 and OMB Circular A–97 would be rescinded.

DATES: Interested parties should submit comments to OFPP, Office of Management and Budget, at the address shown below on or before December 19, 2002.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Electronic comments may be submitted to: *A-76comments@omb.eop.gov.* Please put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–5105. Comments may be mailed to Mr. David C. Childs, Office of Federal Procurement Policy, Office of Management and Budget, 725 17th Street NW., New Executive Office Building, Room 9013, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. David C. Childs, Office of Federal Procurement Policy, NEOB Room 9013, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 (tel: (202) 395–6104).

Availability: Copies of the proposed revision to OMB Circular A–76 may be obtained at the OMB home page at www.whitehouse.gov/OMB/circulars/index.html#numerical. Copies of the current OMB Circular A–76, the Revised Supplemental Handbook, applicable Transmittal Memoranda, OFPP Policy Letter 92–1, and OMB Circular A–97 are also available on the OMB home page. Paper copies of any of the documents identified above may be obtained by calling OFPP (tel: (202) 395–7579).

SUPPLEMENTARY INFORMATION:

A. Overview

To lower costs for taxpayers and improve program performance to citizens, OMB has undertaken major revisions to the processes and practices in OMB Circular A–76 that govern how federal agencies determine whether commercial activities will be performed by public or private sources. The proposed revisions would:

- Significantly expand the use of public-private competition by (i) eliminating exceptions that have permitted federal agencies to provide services to one another on a sole-source basis under reimbursable fee-for-service agreements (*i.e.*, commercial ISSAs) and (ii) requiring periodic recompetitions of commercial activities performed for the government;
- Make processes simpler and easier to understand, including greater reliance on concepts and practices set forth in the FAR that are familiar to, and well tested by, the acquisition community;
- Improve the effectiveness of competitions by giving agencies greater flexibility to consider quality in source selections, including the use of cost-technical tradeoffs for information technology (IT) and certain other activities;
- Improve public trust in public-private competitions by avoiding any appearance of conflicts of interest;
- Increase visibility into the management of government by requiring agencies to develop lists of their commercial and inherently governmental activities and make them available to the public; and
- Strengthen accountability for achieving results by centralizing agency oversight for the management of commercial activities and increasing the focus on post-award administration of agreements with public providers to be more consistent with practices applied to contracts with private sector providers.

B. The Purpose and Procedures of OMB Circular A–76

Federal agencies rely on a mix of public and private sector sources to perform a wide variety of recurring commercial activities that are needed to conduct the business of government. These activities range all the way from custodial services to data collection, computer services and research, testing, and maintenance of equipment used by our nation's war fighters. OMB Circular A–76 establishes the policies and procedures for identifying commercial activities and determining whether these activities should be provided through contract with commercial service providers, by in-house government personnel, or through reimbursable fee-for-service providers under ISSAs with other government agencies.

Before an agency shifts commercial work from one sector to another (*e.g.*, from in-house performance to contract, or vice versa), Circular A–76 generally requires the agency to conduct a public-private competition in which the cost of performance is compared between and among the public and private sectors. To perform a ''cost comparison'' under the current Circular, agencies must:

- Develop a performance work statement (PWS);
- Create a management plan to determine the government's ''most efficient organization'' (MEO);
- Establish an in-house government cost estimate for the in-house plan that is then certified by an independent reviewing official (IRO) for compliance with the PWS and costing policies set forth in the Circular;
- Issue a solicitation in accordance with the FAR seeking offers from private and public sector sources, except for the in-house source, whose cost estimate is submitted and evaluated independently;
- Identify the best offer submitted in response to the solicitation and compare it to the in-house estimate; and
- Make award to the lower cost alternative (which is subject to review under an administrative appeals process).

The Circular also recognizes a variety of circumstances in which agencies are

not required to conduct cost comparisons.

No shifting of work contemplated. Cost comparisons are not required where work is not presently being performed in-house and the agency seeks to award a contract for a new or expanded service requirement or for a service that is currently being obtained through a competitively awarded contract.

Direct conversions. The Circular allows agencies to directly convert work to or from the private sector without cost comparison under certain circumstances. For example, work may be directly converted where an activity is or will be performed by an aggregate of 10 or fewer ''full-time-equivalent'' employees (FTEs), or where conversion will result in no employee impact (*e.g.*, because they are reassigned to comparable federal positions or voluntarily retire).

Ongoing agency performance. Commercial services activities that have been continuously performed by an in-house provider or another agency through an ISSA are not subject to recurring cost comparisons. In March 1996, OMB amended the Supplemental Handbook to require cost comparisons before new or expanded work is performed in-house or through an ISSA. However, there is no limitation on the length of the new agency performance agreements, thus allowing indefinite deferral of further competitions.

Exercise of agency waivers. Agency heads are authorized to waive cost comparisons under certain conditions. For instance, an agency may waive the cost comparison requirement where a conversion will result in a significant financial or service quality improvement and the proposed conversion will not serve to reduce significantly the level or quality of competition in the future award or performance of work.

C. Shortcomings of Current Circular A–76 Processes

Since its original issuance in 1966, Circular A–76 has been revised three times—in 1967, 1979, and 1983. The Supplemental Handbook, first issued in 1979, has been revised three times—in 1983, 1996 and 1999. Despite the revisions, including the development of streamlined cost comparisons for activities with 65 or fewer FTEs, the policies and processes of Circular A–76 have not been widely applied. While the Department of Defense has undertaken some noteworthy efforts, most of the 850,000 FTEs that agencies have identified as performing commercial activities (nearly half of all federal employees) remain insulated from the dynamics of competition.

A variety of factors have limited the Circular's use and effectiveness:

The Circular's exceptions allow for significant amounts of agency work to be performed without competition. As described above, ISSAs between federal agencies for commercial support services in place before 1996 enjoy a special exemption from the Circular's competition requirements. Simply put, there is no requirement to subject these reimbursable agreements to competition unless an agency voluntarily decides to consider changing its current provider. As a result, billions of taxpayer dollars continue to be spent on federal operations that have never been exposed to the innovation and efficiency that competition generates. Even where competitions are conducted, there are no requirements to limit the period of performance if a public provider wins the competition. Consequently, many public providers continue to escape the competitive pressures that would likely motivate optimal performance.

The competition process is complicated and not well understood. Conducting a cost comparison can be time consuming and complex. In-house providers often lack the training and technical support needed to develop management plans, solicitations, or fully allocated cost estimates. In addition, the Circular includes numerous procedures that are different from the established acquisition processes set forth in the FAR for conducting competitions among private sector sources. These differences serve as necessary safeguards for public-private competitions, especially when in-house performance is contemplated. However, many believe the process for carrying out public-private competitions under Circular A–76 could be made more understandable by using basic FAR principles.

Current processes do not give agencies sufficient flexibility to make best value decisions. Historically, Circular A–76 has focused agency sourcing decisions on cost. Cost must always be a factor and often should be the most important factor. At the same time, securing good performance often hinges on quality considerations that may require agencies to make tradeoffs between cost and quality when evaluating sources. The 1996 Supplemental Handbook introduced the concept of best value to public-private competitions. However, it places significant limitations on an agency's ability to use cost-technical tradeoffs in a public-private source selection process.

Many believe the process is susceptible to gaming. Despite various safeguards, including costing principles that allow federal managers to make cost comparisons between sectors that have vastly divergent approaches to cost accounting, there remains a general sense that public-private competitions are not always fair. This perception is driven, in part, by the fact that agencies have considerable control over the timing of competitions. Managers often delay the start of, or unnecessarily draw out, competitions without consequence, hurting morale and reducing the number of private sector firms willing to compete. In addition, federal employees historically have been allowed to participate both in defining performance requirements and developing the in-house offer—causing some to question if conflicts of interest could exist. These concerns serve to discourage participation in public-private competitions and weaken taxpayer confidence in the overall process.

Accountability for results is limited. When public employees compete and win work, government managers are often not held fully accountable for making good on the projected savings and improved performance identified in the agency's offer. Current guidance requires post-competition reviews, but only for 20 percent of the functions performed by the government following a cost comparison. As a result, even where competition is used to transform a public provider into a high-value service provider, few steps are routinely taken to ensure this potential translates into positive results.

D. Proposed Revisions to Circular A–76

OMB is committed to improving significantly the processes and practices federal agencies use to determine whether commercial activities will be performed by public or private sector sources. These decisions have a direct and substantial effect on the government's ability to deliver quality service to our citizens in a cost-effective, timely, and responsible manner. Therefore, OMB is proposing major revisions to Circular A–76 to: (1) Improve and expand the use of competition in public-private sourcing decisions, (2) better ensure fairness, integrity, and transparency in the decision-making process, and (3) strengthen accountability for achieving results.

In addition to making significant substantive changes, OMB is modifying the organization of the Circular to improve clarity and ease of use. The main body of the Circular (now a two-page document) lays out the basic

policy tenants and responsibilities that agencies must undertake. Guidance for carrying out these responsibilities, and a detailed glossary of acronyms and definition of key terms, are set forth in six attachments:

Attachment A—Inventory Process
Attachment B—Public-Private Competition
Attachment C—Direct Conversion Process
Attachment D—Inter-Service Support Agreements
Attachment E—Calculating Public-Private Competition Costs
Attachment F—Glossary of Acronyms and Definitions of Terms

The key substantive changes in the proposed revision to Circular A–76 are as follows:

1. Improving and Expanding the Use of Competition

This Administration's general policy is to rely on competition to select the providers of commercial activities that agencies perform in carrying out their missions. The benefits of competition are well documented. The General Accounting Office (GAO) and the Center for Naval Analysis repeatedly have concluded that subjecting larger in-house operations to competition has consistently generated cost savings exceeding 30 percent. See, e.g., Future Years Defense Program: Funding Increase and Planned Savings in Fiscal Year 2000 Program Are at Risk, GAO/NSIAD–00–11 (November 1999); Evidence on Savings from DOD A–76 Competitions, Center for Naval Analysis, CRM 98–125 (November 1998); Long-Run Costs and Performance Effects of Competitive Sourcing, Center for Naval Analysis, CRM D0002765.A2 (February 2001).

The President has identified competitive sourcing—i.e., the process of opening the government's commercial activities to the discipline of competition—as one the five main initiatives of his Management Agenda for improving the performance of government. Changes set forth in the proposed revisions to Circular A–76 are designed to facilitate broader and more strategic use of competitive sourcing as a management tool for improving agency performance.

a. Competition as the Norm

i. Presumption that an activity is commercial. The revised Circular will require agencies to presume that all activities are commercial in nature unless an activity is justified as inherently governmental. See § 4.b. of the Circular and ¶ D.1 of Attachment A. To reinforce this presumption, agencies will be required to submit annual inventories of their inherently governmental positions. See ¶ C.3. of Attachment A. The Circular offers a more concise definition of ''inherently governmental'' and rescinds the more complex description contained in OFPP Letter 92–1 to achieve greater consistency in the identification of inherently governmental positions. The responsibility to develop an inherently governmental activities inventory will be in addition to the general obligation for agencies to prepare comprehensive annual inventories of their commercial activities performed by Federal activities, a requirement derived from the Federal Activities Inventory Reform (FAIR) Act (Pub. L. 105–270; 31 U.S.C. 501 note). See ¶ C.1. of Attachment A. With limited exception, the list of inherently governmental activities will be made available for public review. These additional steps should help to improve the accuracy of inventories and cast greater transparency on the government's commercial activities overall.

ii. Elimination of anti-competitive agency-to-agency arrangements. The revised Circular will eliminate the ''grandfather clause'' that currently permits public reimbursable service providers working under commercial ISSAs in existence prior to March 1996 to perform work indefinitely without being subject to competition. Agencies relying on public reimbursable providers will be required to develop plans for competing these commercial ISSAs within five years. All commercial ISSAs that are not competed or directly converted within this timeframe will be terminated, unless specific approval is granted by OMB's Deputy Director for Management, based on a report submitted by the head of the customer agency demonstrating why competition is not yet feasible. See ¶ B.3.of Attachment D.

In addition, customer agencies will be required to periodically test the marketplace by recompeting requirements performed by public reimbursable providers, just as they would with private sector contractors. This will help to ensure that all sources, public and private, are appropriately incentivized to perform at their best. Generally, agencies will be required to recompete commercial ISSAs every five years. The exact performance period will be identified in the ISSA or in a letter of obligation when the work is performed in house directly by the agency employees. See ¶¶ C.2.a.(5). and C.5.a.(4). and b.(2). of Attachment B.

There will be limited exceptions to the recompetition requirement. For example, commercial ISSAs will not be subject to competition if the revenue generated to the public reimbursable service provider performing under the ISSA does not exceed $1 million on an annual basis. An exemption will also be provided for inherently governmental ISSAs that, among other things, establish contracts for inter-agency use *e.g.,* such as a government-wide acquisition contract or multi-agency contract), and where the public reimbursable provider bears no responsibility to the customer agency for performance of the work and the customer agency is responsible for making all payments directly to the contractor. See ¶ A of Attachment D.

Finally, the revised Circular will incorporate long-standing limitations imposed on federal agencies regarding the reimbursable services they provide to state and local governments. See ¶ H of Attachment D. These requirements, which are based on section 302 of the Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6505), are currently implemented in OMB Circular A–97. Circular A–97 states that federal agencies may provide only specialized or technical commercial services to a state or local government if, among other things: (1) The requesting state or local government entity demonstrates that it has sought but has been unable to identify a satisfactory private sector source, (2) the provision of such specialized and technical services shall not require additional resources, beyond those necessary to meet federal requirements, and (3) the service is currently provided by the agency for its own use and, if commercial in nature, has been competed in accordance with Circular A–76. By rescinding Circular A–97 and incorporating its requirements in Circular A–76, the key policies addressing the appropriate parameters of federal performance of commercial activities will be set forth in one document.

b. Expanded Reliance on Well-Established FAR Practices

The revised Circular requires that agencies generally comply with the FAR in conducting competitions. *See* § 4.d. of the Circular and ¶ C.2. of Attachment B. The general principles of the FAR are well established and enjoy widespread familiarity within the procurement community. Greater application of FAR-type principles and practices throughout the Circular is intended to bring public-private competitions closer to mainstream source selection and reduce confusion that may currently

make it more difficult for parties to compete. Examples of FAR-type principles that have been incorporated into the revised Circular include:

• Greater uniformity in the application of basic requirements to private and in-house providers. For instance, in-house offers (referred to in the proposed Circular as ''agency tenders'') will be required to respond to a solicitation within the same timeframes required of private sector offerors or public reimbursable tenders or risk elimination from the competition. *See* ¶ C.3.a.(2), (8) and (9) of Attachment B. Furthermore, instead of having an IRO review the agency tender, while all other offerors are reviewed by the source selection evaluation board (SSEB), the SSEB will simultaneously evaluate all tenders simultaneously with all offers. *See* ¶¶ C.4.a.(1).a, a.(2)., and a.(3).a. of Attachment B;

• Ability to conduct cost-technical tradeoffs in certain circumstances, largely in accordance with FAR Part 15, including the ability to eliminate an agency tender from the competitive range (see further discussion below);

• Exchanges between public tenders and the government in accordance with the general principles set forth in the FAR for exchanges between the government and the private sector. *See* ¶ C.4.a(3)(a). of Attachment B;

• Post award accountability for in-house performance similar to that expected of private sector contractors. Agencies relying on an in-house provider or a public reimbursable provider will be required to document changes to the solicitation, track actual costs, and terminate for failure to perform. *See* ¶ C.5.a.(4). of Attachment B. As described above, agencies will also be required to recompete work being performed by in-house or public reimbursable providers in accordance with the same time limitations imposed by the FAR on contracts with the private sector.

The revised Circular recognizes the talents and conditions under which the federal workforce operates and the importance of providing them with adequate training and technical support during the competition process to ensure they are able to comply with the requirements of the Circular and compete effectively. In this regard, the Circular requires that the agency tender official, the PWS team, and the MEO team be assisted by specific experts, including human resources, procurement, and management experts. *See* generally ¶ B.3.a. of Attachment B.

c. Greater Emphasis on Best Value

Cost comparisons have been the traditional focal point of Circular A–76. Reflective of the focus of the Circular for most of its history, the term connotes a cost-only sourcing decision. While cost will always be an important consideration in sourcing decisions, and often the most important consideration, agencies should also have the ability to take quality and innovation into account, especially where needs may require complex and inter-related services. For this reason, the term ''cost comparison'' has been dropped from the proposed Circular and replaced with the term competition.

The new focal point will be on ''standard competitions,'' or direct conversions when appropriate. Recognizing that agency needs cannot be met through a ''one-size-fits all'' approach, the Circular's guidance is broader and more accommodating than that which was developed over the years for the conduct of cost comparisons.

For example, when conducting a standard competition, agencies will have three options for considering non-cost factors. First, an agency may conduct a low price technically acceptable source selection where the performance decision is based on the low cost of offers that have been determined to be technically acceptable. *See* ¶ C.4.a.(3).b. of Attachment B. Second, if an agency wishes to have the flexibility of considering alternative performance levels that sources may wish to propose, the agency may conduct a ''phased evaluation process.'' During the first phase when technical factors are considered, the in-house provider, public reimbursable providers and private sector offerors may propose performance standards different from those specified in the solicitation. If the agency determines that the proposed alternative performance standards are appropriate and are within the agency's current budget, the agency could issue a formal amendment to the solicitation and allow revised submissions. The technically qualified offerors and the in-house offeror would then compete based on price against the revised performance standard. *See* ¶ C.4.a.(c).2. of Attachment B.

Finally, if non-cost factors are likely to play a more dominant role, agencies may conduct an ''integrated evaluation process'' with cost-technical tradeoffs similar to those authorized by FAR Part 15. Like the FAR Part 15 process, private sector offers, public reimbursable providers and in-house providers may submit higher performance standards than the solicitation. If the in-house offer is not among the most highly rated proposals, it could be eliminated from the competitive range, as would be envisioned by FAR 15.306(c). The source selection authority (SSA) would be required to document its rationale for any tradeoffs as required by FAR 15.406. Given the special considerations that must be taken into account with a public-private competition, the Circular recognizes that this integrated evaluation technique may not be appropriate for all needs and should be tested before wider application is authorized. For this reason, the Circular limits usage to (1) IT activities currently performed by federal employees, (2) contracted commercial activities, new requirements, or segregable expansions where an agency tender will be submitted, or (3) any other commercial activities where the agency's assistant secretary or equivalent level official with responsibility for implementing the Circular (*i.e.,* the ''4.e official'') receives approval from OMB prior to issuance of the solicitation. *See* ¶ C.4.a(c)1. of Attachment B.

2. Ensuring Fairness, Integrity, and Transparency

The revised Circular will establish new rules to separate the team that is formed to write the solicitation from that established to develop the agency tender. In addition, the agency MEO team, directly affected personnel (and their representatives) and any individual with detailed knowledge of the MEO or agency cost estimate in the agency tender will not be allowed to be members of the SSEB. *See* ¶ D.2. of Attachment B. These steps are intended to avoid any appearance of a conflict of interest and garner the public's trust in the processes used to make critical sourcing decisions.

3. Strengthening Accountability for Results

The ultimate success of Circular A–76 to deliver results for the taxpayer requires that appropriate mechanisms be in place to ensure selected public or private sources make good on their promises. To this end, the revised Circular will:

• *Require agencies to centralize oversight responsibility.* Agencies will be required to establish a program office responsible for the daily implementation and enforcement of the Circular. Improved oversight will serve to enhance communications, facilitate sharing of lessons learned, and significantly improve overall

compliance with the Circular. *See* ¶ C.1.b.(5). of Attachment B.

• *Impose competition timeframes.* The revised Circular states that a standard competition shall be completed within one year of the public announcement that a competition will be conducted. The 4.e. official (*i.e.*, an agency assistant secretary or equivalent level official with responsibility for implementing the Circular) may waive the one-year completion requirement at announcement of the competition and set an alternative completion date if the competition is particularly complex and notification is provided to OMB. *See* ¶ C.1.b.(3). of Attachment B. These timeframes are designed to incentivize agencies to complete competitions and will instill greater confidence by all participants that agencies are committed to competitive sourcing and selecting the best provider. It will also ensure that the benefits of competition are realized.

• *Improve post competition oversight.* To ensure public providers are subjected to the same oversight that private providers routinely face, customer agencies will be required to document changes in the solicitation and agency tender and track actual costs. Before exercising an option for additional performance, the agency will be required to determine that performance by the in-house, public reimbursable, or private contract provider meets the requirements of the solicitation and that continued performance is advantageous to the agency. *See* ¶ C.5.b.(2). of Attachment B.

Mitchell E. Daniels, Jr.,

Director.

[FR Doc. 02–29472 Filed 11–15–02; 12:37 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46800; File No. S7–966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Order Approving Amendment to the Plan Allocating Regulatory Responsibility Among the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

November 8, 2002.

Notice is hereby given that the Securities and Exchange Commission (''SEC or ''Commission'') has issued an Order, pursuant to sections 17(d)[1] and 11A(a)(3)(B)[2] of the Securities Exchange Act of 1934 (''Act''), approving an amendment to the plan for allocating regulatory responsibility filed pursuant to Rule 17d–2 of the Act,[3] by the American Stock Exchange LLC (''Amex''), the Chicago Board Options Exchange, Inc. (''CBOE''), the International Securities Exchange, Inc. (''ISE''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively the ''SRO participants'').

I. Introduction

Section 19(g)(1) of the Act[4] requires, among other things, every national securities exchange and registered securities association (''SRO'') to examine for, and enforce, compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to section 17(d)[5] or 19(g)(2)[6] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for, and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement section 17(d)(1), the Commission adopted two rules: Rule 17d–1[8] and Rule 17d–2[9] under the Act. Rule 17d–1, adopted on April 20, 1976,[10] authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d–1 deals only with an SRO's obligations to enforce broker-dealers' compliance with the financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted Rule 17d–2 under the Act.[11] This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

On October 11, 2002, the Commission published notice of the SRO participants' amended plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[12] No comments were received. The primary purpose of the amendment is to allocate regulatory responsibilities among all of the SRO participants.[13] In addition, the amended

[1] 15 U.S.C. 78q(d).

[2] 15 U.S.C. 78k–1(a)(3)(B).

[3] 17 CFR 240.17d–2.

[4] 15 U.S.C. 78s(g)(1).

[5] 15 U.S.C. 78q(d).

[6] 15 U.S.C. 78s(g)(2).

[7] Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session. 32 (1975).

[8] 17 CFR 240.17d–1.

[9] 17 CFR 240.17d–2.

[10] Securities Exchange Act Release No. 12352, 41 FR 18809 (May 3, 1976).

[11] Securities Exchange Act Release No. 12935, 41 FR 49093 (November 8, 1976).

[12] Securities Exchange Act Release No. 46590 (October 2, 2002), 67 FR 63474.

[13] Under the previous agreement, only the Amex, the CBOE, the NASD, and the NYSE were designated options examining authorities (''DOEAs''). *See* Securities Exchange Act Release No. 42816 (May 23, 2000), 65 FR 34759 (May 31, 2000).

plan allows an SRO participant that has been allocated regulatory responsibilities under the plan (*i.e.*, a DOEA) to contract with The Options Clearing Corporation, a national securities exchange registered under section 6(a) of the Act,[14] or a national securities association registered under section 15A of the Act [15] to perform the DOEA's responsibilities under the plan.

II. Discussion

The Commission continues to believe that the proposed plan, as amended, is an achievement in cooperation among the SRO participants and will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related sales practice matters that would otherwise be performed by multiple SROs. The plan promotes efficiency by reducing costs to firms that are members of more than one of the SRO participants. In addition, because the SRO participants coordinate their regulatory functions in accordance with the plan, the plan promotes, and will continue to promote, investor protection.

With respect to the DOEA's ability to contract with another SRO to perform the DOEA's regulatory responsibilities under the plan, the Commission has previously recognized that contractual regulatory agreements between SROs outside of the Rule 17d–2 context may be permissible in instances where it is consistent with the public interest.[16] The Commission believes that it is reasonable and consistent with the public interest to allow an SRO to contract with another SRO to perform regulatory functions and services. At the same time, the Commission believes that it is important for, and that the Act requires, the ultimate responsibility and primary liability for self-regulatory failures to rest with the DOEA itself, rather than the SRO retained to perform the regulatory responsibilities. Thus, the DOEA will bear ultimate legal responsibility for the performance of the regulatory responsibilities allocated to it under the 17d–2 plan. The SRO contracting to carry out the responsibilities, however, may nonetheless bear liability for causing or, in appropriate circumstances, aiding and abetting the DOEA's violations.

This order gives effect to the amended plan submitted to the Commission that is contained in File No. S7–966. The SRO participants shall notify all members affected by the amended plan of their rights and obligations under the amended plan.

It is therefore ordered, pursuant to sections 17(d) and 11A(a)(3)(B) of the Act, that the amended plan of the Amex, the CBOE, the ISE, the NASD, the NYSE, the PCX, and the Phlx filed pursuant to Rule 17d–2 is approved.

It is further ordered that those SRO participants that are not the DOEA as to a particular member are relieved of those responsibilities allocated to the member's DOEA under the amended plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29246 Filed 11–18–02; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78f(a).

[15] 15 U.S.C. 78o–3.

[16] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11401 (March 2, 2000).

[17] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to an Extension of the Permissible Maturity of Flexible Exchange Index Options to Ten Years

November 12, 2002.

[Release No. 34–46815; File No. SR–CBOE–2002–23)]

On April 30, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with 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 to revise CBOE Rule 24A.4, ''Terms of FLEX Options,'' to provide a maximum term of up to ten years for Flexible Exchange (''FLEX'') index options [3] under certain circumstances.

The proposed rule change was published for comment in the **Federal Register** on August 21, 2002.[4] No comments were received regarding the proposal. This order approves the proposed rule change.

Currently, CBOE Rule 24A.4(a)(4)(i) provides a maximum term of five years for FLEX index options. The CBOE proposes to amend CBOE Rule 24A.4(a)(4)(i) to provide a maximum term of up to ten years for FLEX index options, provided that the FLEX Post Official determines that sufficient liquidity exists among FLEX index participating members to support a request for a quote for such options. To determine whether sufficient liquidity exists to support a request for a quote, the FLEX Post Official will ask FLEX index market makers and other FLEX index traders (including the Submitting Member) whether they are interested in making a two-sided market in the proposed series for the size requested.[5] If the FLEX index market makers and FLEX index traders respond affirmatively, the FLEX Post Official will open a Request for Quotes for the proposed series, which will trade pursuant to the provisions of CBOE Rule 24A.5, ''FLEX Trading Procedures and Principles.''[6] The CBOE believes that this requirement will help to prevent the proliferation of longer-term FLEX index options where there is no interest in trading such options.

The margin requirements for the proposed FLEX index options will be the same as the margin requirements that apply currently to existing FLEX index options and to other listed options.[7] Thus, the required minimum initial and maintenance margin for a proposed FLEX index option with more than nine months to expiration will be at least 75% of the current market value of the option.[8] The required minimum initial and maintenance margin for a short position in the proposed FLEX index options will be the same as the margin required for short positions in other listed broad-based index options.[9]

According to the CBOE, the Exchange has received numerous requests from broker-dealers to extend the maturity of FLEX index options to ten years to permit their institutional customers that trade or issue securities with five-to ten-year terms to hedge their long-term risk. The CBOE states that the proposal will allow institutions to use long-term FLEX

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FLEX index options allow investors to customize certain option terms, including size, expiration date, exercise style, and exercise price.

[4] *See* Securities Exchange Act Release No. 46363 (August 15, 2002), 67 FR 54243.

[5] See letter from Jaime Galvan, Attorney II, CBOE, to Yvonne Fraticelli, Division of Market Regulation, Commission, dated October 14, 2002 (''October 14 Letter'').

[6] *See* October 14 Letter, supra note 5.

[7] *See* October 14 Letter, supra note 5.

[8] *See* CBOE Rule 12.3(c)(4)(B).

[9] *See* October 14 Letter, supra note 5. Under the CBOE's rules, the required minimum initial and maintenance margin for an unhedged position in a listed broad-based index option carried short in a customer's account is 100% of the current market value of the option plus 15% of the product of the current index group value and the applicable index multiplier, reduced by any out-of-the-money amount, with a minimum margin requirement equal to 100% of the current market value of the option plus 10% of the product of the current index group value and the applicable index multiplier. See CBOE Rule 12.3(c)(5)(A).

index options to protect their portfolios from long-term market moves at a known and limited cost. In addition, the CBOE believes that the proposal will better serve the long-term hedging needs of institutional investors and provide those investors with an alternative to hedging their portfolios with off-exchange customized index options and warrants.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act [10] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with the requirements under section 6(b)(5) of the Act [11] that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.[12]

The Commission believes that extending the permissible maturity of FLEX index options to a maximum term of up to ten years will help to meet the long-term hedging requirements of institutional investors and other market participants.[13] The proposal should benefit market participants with long-term hedging needs by allowing them to hedge positions on a long-term basis through an investment in one option series, rather than having to roll shorter-term expirations into new series to remain hedged over an extended period of time. In addition, the proposal will allow market participants to hedge long-term risk with an exchange-traded option, thereby providing an alternative to hedging positions with over-the-counter (''OTC'') products and extending the benefits of a listed, exchange market to longer-term index options.[14] The extension of the permissible maturity term for FLEX index options to up to ten years also could help to expand the depth and liquidity of the FLEX index option market.

The Commission notes that a series of the proposed FLEX index options may be issued only if a FLEX Post Official determines that there is sufficient liquidity among FLEX index participating members to support the request for a quote for such options. This requirement should help to prevent the proliferation of longer term FLEX index options series where there is no interest in trading such options. In addition, as with all exchange-traded options, the OCC will act as the counter-party guarantor, thereby ensuring that obligations will be met over the long term. In approving this proposal, the Commission notes that the extension to ten years is based, in part, on the nature of the FLEX market, which is geared toward institutional investors and high net worth individuals.[15] The Commission believes that because of their experience, these market participants may be better able to assess the risks of longer term index option products.[16]

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR-CBOE–2002–23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29240 Filed 11–18–02; 8:45 am]

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[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] FLEX index options are designed to appeal to institutional investors or extremely high net worth individuals who have the experience and ability to engage in negotiated, customized transactions. In this regard, the Commission notes that the required minimum size for an opening transaction in any FLEX index option series in which there is no open interest is $10 million Underlying Equivalent Value (the aggregate underlying monetary value covered by that number of contracts, derived by multiplying the index multiplier by the current index value times the given number of FLEX index options). See CBOE Rule 24A.4(a)(4)(ii).

[14] As the Commission has noted previously, the benefits of the CBOE's market versus an OTC market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of the Options Clearing Corporation (''OCC'') for all contracts traded on the CBOE. See Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (File No. SR-CBOE–92–17) (approving the CBOE's proposal to list and trade FLEX options on the S&P 500 Index and the S&P 100 Index).

[15] *See* note 13, supra.

[16] *See also* note 12 in Securities Exchange Act Release No. 39524 (January 8, 1998), 63 FR 3009 (January 20, 1998) (order approving File No. SR-CBOE–97–57) (noting certain concerns that may be raised by long-term options).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46808; File No. SR–CBOE–2002–30]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Amending Rule 8.85(a)(xi) and Rule 17.50 To Require Members To Use and Maintain CBOE's AutoQuote System as a Back-up Quoting System

November 12, 2002.

I. Introduction

On June 11, 2002, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 amending Rule 8.85(a)(xi) and Rule 17.50 to require Exchange members to use and maintain CBOE's AutoQuote System as a back-up quoting system. On September 3, 2002 the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for public comment in the **Federal Register** on October 3, 2002.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposed Rule Change

The Exchange is adopting new Rule 8.85(a)(xi) which states that, with respect to a Designated Primary Market-Maker (''DPM'') trading station utilizing a proprietary autoquote system, such DPM is obligated to assure that the CBOE AutoQuote system is maintained as a back-up autoquote system at all times during market hours. While many DPMs utilize CBOE's AutoQuote system, some DPMs have opted to use non-CBOE proprietary automated quotation updating systems. CBOE has allowed members to employ proprietary autoquote systems provided such systems are approved by the Exchange's appropriate Floor Procedure Committee. The failure of a proprietary autoquote system could result in CBOE's inability to open for an entire group of listed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Angelou Evangelou, Senior Attorney, CBOE, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated August 30, 2002.

[4] Securities Exchange Act Release No. 46539 (September 24, 2002), 67 FR 62084.

option classes for a brief or sometimes lengthy time period. Thus, CBOE strongly encouraged, and now requires, that members have CBOE's AutoQuote system ready as a back-up should a proprietary system fail. The Exchange also proposes to add subparagraph (g)(10) to CBOE Rule 17.50—Imposition of Fines for Minor Rule Violations, to incorporate in its Minor Rule Violation Plan violations of new Rule 8.85(a)(xi).

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with section 6 of the Act [5] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act [6] which requires, among other things, that the rules of the exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is also consistent with section 6(b)(6) of the Act,[7] which generally requires that the Exchange provide for the appropriate discipline of its members, and Rule 19d–1(c)(2) under the Act,[8] which governs minor rule violation plans.

The proposed rule change removes impediments to and perfects the mechanism of a free and open market because by requiring members of the Exchange to maintain CBOE's AutoQuote system as a back-up, the Exchange provides a mechanism for ensuring the smooth and uninterrupted operation of the Exchange in the event of a failure by a member's proprietary autoquote system. Without CBOE's AutoQuote system in place as a back-up, the Exchange might be unable to open trading for an entire group of listed option classes if a proprietary autoquote system fails. Requiring members to maintain CBOE's AutoQuote system as a back-up would avoid such disruptions, which in turn would benefit investors and the public interest.

The Commission also finds that adding Rule 8.85(a)(xi) to the list of violations included in the Exchange's Minor Rule Violation Plan (''Plan'') is consistent with requirements of Section 6(b)(6) of the Act [9] because it provides an additional option for the appropriate discipline of Exchange members. The Commission notes that while the Plan provides the Exchange with the option of proceeding under the Plan against a member found to be in violation of a rule included in the Plan, the Exchange must continue to conduct surveillance of its members and ensure their compliance with the Exchange's rules, and to proceed with formal disciplinary action if a particular case warrants such action. Finally, the Commission finds that the addition of Rule 8.85(a)(xi) to the list of violations included in the Exchange's Plan is consistent with Rule 19d–1(c)(2) under the Act,[10] which governs minor rule violation plans because the Plan provides an efficient means to punish violations of Exchange rules, consistent with the public interest and the protection of investors.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–2002–30), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29315 Filed 11–18–02; 8:45 am]

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[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6).

[8] 17 CFR 240.19d–1(c)(2).

[9] 15 U.S.C. 78f(b)(6).

[10] 17 CFR 240.19d–1(c)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46814; File No. SR–ISE–2002–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Stock Exchange, Inc. To Amend Rule 720 Regarding Options Priced Under $3.00

November 12, 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 16, 2002, the International Stock Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rule 720 (the ''Obvious Error Rule'') as it pertains to transactions in options priced under $3.00. The text of the proposed rule change is set forth below. Proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

Rule 720. Obvious Errors

The Exchange shall either bust a transaction or adjust the execution price of a transaction that results from an Obvious Error as provided in this Rule.

(a) Definition of Obvious Error. For purposes of this Rule only, an Obvious Error will be deemed to have occurred when:

(1) if the Theoretical Price of the option is less than $3.00[,]*:*

(i) during regular market conditions (including rotations) the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of [25] *35* cents or more; or

(ii) during fast market conditions (i.e., the Exchange has declared a fast market status for the option in question), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 50 cents or more.

(2) if the Theoretical Price of the option is $3.00 or higher:

(i) during regular market conditions (including rotations), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least two (2) times the maximum bid/ask spread allowed for the option, so long as such amount is 50 cents or more; or

(ii) during fast market conditions (*i.e.*, the Exchange has declared a fast market status for the option in question), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least three (3) times the maximum bid/ask spread allowed for the option, so long as such amount is 50 cents or more.

* * * * *

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 the proposed rule change and discussed any comments it received on the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 25, 2002, the Commission approved an amendment to the ISE Rule 720 (''June Amendment''),[3] which gives the Exchange authority to bust or adjust trades that result from an obvious error based upon objectives standards for determining the circumstances under which a trade should be adjusted or busted. In the June Amendment, the Exchange changed the standard for determining the existence of an obvious error for options series trading under $3.00. Specifically, the June Amendment provided that an obvious error would be deemed to have occurred if the difference between the execution price and the theoretical price is at least $.25. The June Amendment did not change ISE Rule 720 with respect to options trading at or above $3.00, which requires the difference between the execution price and theoretical price of an option be at lease twice the allowable spread in normal market conditions and three times the allowable spread in fast market conditions.

The Exchange's experience since the June Amendment indicates that a difference of only $.25 is too low and may allow trades that are not obviously erroneous to qualify for obvious error treatment. In addition, the June Amendment did not provide for a larger difference between the execution price and the theoretical price during fast market conditions, as is the case for options price at and above $3.00. Accordingly, the Exchange proposes to increase the amount by which the execution price of an option priced under $3.00 must differ from the theoretical price from $.25 to $.35 in normal market conditions, and to provide that the difference must be at least $.50 in fast market conditions. This proposal will allow fewer executions to qualify as obvious errors, and therefore fewer situations where a trade may be busted or adjusted under ISE Rule 720.

The ISE developed Rule 720 to address the need to handle errors in a fully electronic market where orders and quotes are executed automatically before an obvious error may be discovered and corrected by ISE members. In formulating ISE Rule 720, the Exchange has weighed carefully the need to assure that one market participant is not permitted to receive a windfall at the expense of another market participant that made an obvious error, against the need to assure that market participants are not simply being given an opportunity to reconsider poor trading decisions. This proposed rule change reflects the Exchange's constant evaluation of the obvious error rule and its fairness to all market participants.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[4] in general and furthers the objectives of section 6(b)(5)[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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 comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)[7] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing the proposed rule change as required by Rule 19b–4(f)(6). In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing the proposed rule change as required by Rule 19b–4(f)(6). At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

The ISE has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that it is reasonable for the ISE, based upon its experience in administering the Rule, to amend the Rule to state that the standard for determining the existence of an obvious error for options series trading at less than $3.00 be whether, in regular market conditions, the difference between the execution price and the theoretical price for the series is at least $.35, and whether, during fast market conditions, the difference between the execution price and the theoretical price for the series is at least $.50. The Commission notes that the proposal refines the June Amendment, which itself was noticed for public comment and received no comment. For these reasons, the Commission designates the proposal to be effective and operative as of the date of this order.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent

[3] *See* Securities Exchange Act Release No. 46110 (June 25, 2002), 67 FR 44487 (July 2, 2002).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–2002–23 and should be submitted by December 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29243 Filed 11–18–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46819; File No. SR–MSRB–2002–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of the Proposed Rule Change Relating to Rule G–14, on Reports of Sales or Purchases

November 12, 2002.

On September 24, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–2002–10). The proposed rule change relates to MSRB Rule G–14, on reports on sales or purchases, by lowering the trade per day threshold for frequently traded municipal securities.

The Commission published the proposed rule change for comment in the **Federal Register**, October 18, 2002.[3] The Commission did not receive any comment letters relating to the forgoing proposed rule change.

I. Description of the Proposed Rule Change

The MSRB filed with the Commission the proposed rule change relating to Rule G–14, on reports of sales or purchases, to increase transparency in the municipal securities market. The Board has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. One product of the Board's Transaction Reporting Program is its Daily Transaction Report, which has been provided to subscribers each day since January 2000. The report is made available each morning by 7 am and includes details of transactions in municipal securities which were ''frequently traded'' the previous business day. From the beginning of the Transaction Reporting Program in 1994 through the spring of 2002, ''frequently traded'' securities were defined as those that were traded four or more times on a given business day. In May 2002, the Board defined ''frequently traded'' securities as those that were traded three or more times on a given day.[4]

When transparency was initially being introduced into the municipal securities market, the Board was concerned that an observer unfamiliar with the market might mistake an isolated reported transaction or pair of transactions as providing a reliable indicator of ''market price.'' Because of this concern, the Board adopted the ''frequently traded'' threshold of four trades. At the same time, the Board has made a commitment to review the use of these reports as experience is obtained and eventually to move to transparency reporting on a more contemporaneous and comprehensive basis.[5]

Since 1994, the Board has made ongoing efforts to increase price transparency in the municipal securities market in measured steps, culminating in comprehensive, real-time price transparency. The first price transparency report, begun in 1995, was a report, published the day after trading (''T+1''), that summarized inter-dealer trades in frequently traded municipal securities. In 1998, the Board added customer trades to the T+1 summary reports, and in January 2000 began, as well, to publish individual transaction data on frequently traded securities. The Board has also introduced ''comprehensive'' transaction reports for this market, which list all municipal securities transactions (regardless of frequency of trading), but which are available no less than one week after trade date.[6]

At this time, the Board believes that the next appropriate step in this process is to change the threshold for determining that information about a municipal security is to be disseminated in the T+1 Daily Transaction Report. The proposed rule change would lower the threshold from three to two trades per day.

Impact of Proposed Report on Transparency

The proposed threshold would increase substantially the proportion of municipal securities market activity that is reported on the day after trading. On a typical day, there are approximately 26,000 transactions in about 10,000 issues, with a total par value traded of about $9.5 billion. The present Daily Transaction Report, with a threshold of three or more trades per day, includes an average of 14,400 trades in 2,600 different issues, with a total par value of about $5.2 billion. Under the proposed threshold, the report is expected to include an average of 19,760 trades in 5,600 issues, with a total par value of about $7.7 billion. This represents a 37 percent increase in the number of trades reported, a more-than-twofold increase in the number of issues reported, and a 48 percent increase in par value reported.[7]

Description of Service

The enhanced Daily Transaction Report with the two-trade threshold will replace the current report and will be made available each day to subscribers via the Internet. Subscribers to the current Service receive the report free of charge, and their subscriptions will continue should the proposed Service be implemented. New subscriptions will be available free to parties who sign a subscription agreement. In addition,

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–46636 (October 10, 2002) 67 FR 64435.

[4] *See* Release No. 34–45861 (May 1, 2002) 67 FR 30989–30990.

[5] *See, e.g.*, ''Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information,'' *MSRB Reports*, Vol. 14, No. 1 (January 1994). In its approval order for the Inter-Dealer Daily Report, the Securities and Exchange Commission noted that the Board, in proceeding to subsequent levels of transparency, ''should continue to work toward publicly disseminating the maximum level of useful information to the public while ensuring that the information and manner in which it is presented is not misleading.'' *See* Release No. 34–34955 (November 9, 1994) 59 FR 59810.

[6] The first comprehensive report was introduced in October 2000 and listed all trades after a one-month delay. The latest comprehensive report began operation in August 2002 and has a one-week delay. *See* Release No. 34–46380 (August 19, 2002) 67 FR 54831–54832.

[7] Data is based upon market activity from April 1, 2001 through July 31, 2001.

recent reports will continue to be available for examination, also free of charge, at the Board's Public Access Facility in Alexandria, VA.

Implementation Schedule

The enhanced report will be available to subscribers as soon as practical after Commission approval of the proposed rule change. It is estimated that the period between approval and implementation will not exceed two weeks.

II. Summary of Comments

The Commission did not receive any comment letters addressing the Board's proposed rule change, but the Board had earlier received a comment letter from The Bond Market Association (''TBMA'').[8] TBMA sent the comment letter in reference to the August 2002 change to the comprehensive daily report, in which TBMA also commented on the Board's announced plan to lower the threshold to two trades.[9] In its letter, TBMA expressed its continued support for the Board's steps to expand transparency in the municipal securities market. TBMA also stated its belief that T+1 dissemination of information on bonds that have traded at least twice a day ''would provide useful information to investors and other market participants and is not likely to have a deleterious impact on the market for such bonds or mislead investors.''[10] TBMA did state a reservation regarding the method of counting trades toward the reporting threshold. TBMA believes that when a dealer ''matches or crosses purchase and sale transactions,'' this constitutes a single trade because this is the economic reality of such transactions, regardless of whether dealers report two transactions to the MSRB.[11]

Consistent with the Board's previous decisions,[12] the transaction reporting system will continue to treat two transactions that constitute ''matched'' or ''crossed'' transactions like other trades. In the general case, only the dealer that effects a purchase and subsequent sale could identify the two trades as crossed agency trades or matched riskless principal transactions. The transaction reporting system does not require dealers to match the two sides of agency trades nor specifically to match or identify riskless principal transactions. Therefore, it is not possible to count those trades differently in the current system for purposes of the T+1 reporting threshold.

III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Act and the rules and regulations thereunder, which govern the MSRB.[13] The language of Section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[14]

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act in that it applies equally to all dealers in municipal securities.

After careful review, the Commission finds that the MSRB's proposed rule change relating to Rule G–14, on reports of sales or purchases, meets the requisite statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of section 15B(b)(2)(C) of the Act, as set forth above.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[15] that the proposed rule change (File No. SR–MSRB–2002–10) be and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29311 Filed 11–18–02; 8:45 am]

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[8] *See* letter from Frank Chin, Chair, Municipal Executive Committee, The Bond Market Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated August 8, 2002.

[9] *Id.*

[10] *Id.,* at 2.

[11] *Id.*

[12] In 1994, a commentator made a similar suggestion with reference to the Board's filing that initiated the transaction reporting program. The commentator, a brokers' broker, suggested that the Board should count as one transaction the situation in which a brokers' broker purchases securities from a dealer and sells them to another dealer. The Board noted in its reply that these are ''riskless principal'' transactions and that other dealers may also do riskless principal transactions. The Board noted that its transaction reporting system would treat the sale to the intermediate dealer (*e.g.*, the brokers' broker) and the intermediate dealer's subsequent sale as two transactions, and that it would treat these trades like any other trades.

[13] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78o–4(b)(2)(C).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46806; File No. SR–NASD–2002–115]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq's Transaction Credit Pilot Program for Exchange-Listed Securities To Allocate Credits To Liquidity Providers

November 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 19, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010 to modify Nasdaq's transaction credit pilot program for exchange-listed securities. Nasdaq will implement the proposed rule change as soon as practicable following Commission approval. The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.[3]

7010. System Services

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The text is marked to show changes from the language of the rule as proposed to be amended by SR–NASD–2002–111, and assumes that the Commission will approve SR–NASD–2002–111 before approving SR–NASD–2002–115. If the Commission determines that SR–NASD–2002–111 should not be approved, Nasdaq will submit an amendment to SR–NASD–2002–115 to reflect the disposition of SR–NASD–2002–111.

(a)–(b) No change.
(c)(1) No change.

(2) Exchange-Listed Securities Transaction Credit

For a pilot period, NASD members that trade securities listed on the NYSE (''*Tape A*'') and Amex (''*Tape B*'') in over-the-counter transactions [reported by the NASD to the Consolidated Tape Association] may receive from the NASD transaction credits based on the number of [trades so reported] *transactions attributed to them. A transaction is attributed to a member if (i) the transaction is executed through CAES or ITS and the member acts as liquidity provider (i.e., the member sells in response to a buy order or buys in response to a sell order) or (ii) the transaction is not executed through CAES or ITS and the member is identified as the executing party in a trade report submitted to the NASD that the NASD submits to the Consolidated Tape Association.* An NASD member may earn credits from one or both pools maintained by the NASD, each pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. An NASD member may earn credits from the pools according to the member's pro rata share of [the NASD's] *all* over-the-counter [trade reports] *transactions attributed to NASD members* in each of Tape A and Tape B for each calendar quarter, ending with the calendar quarter starting on October 1, 2002.

(d)–(r) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange (''NYSE'') and the American Stock Exchange (''Amex'').[4] The InterMarket competes with regional exchanges like the Chicago Stock Exchange (''CHX'') and the Cincinnati Stock Exchange (''CSE'') for retail order flow in stocks listed on the NYSE and the Amex. InterMarket comprises the Computer Assisted Execution System (''CAES''), a system that facilitates the execution of trades in listed securities between NASD members that participate in InterMarket, and the Intermarket Trading System (''ITS''), a national market system plan that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.[5]

Nasdaq is proposing to modify the InterMarket Transaction Credit Pilot Program (the ''Program'') that it began in 1999.[6] Under the Program, Nasdaq shares a portion of the tape revenues that it receives (through the NASD) from the Consolidated Tape Association (the ''CTA''), by providing a transaction credit to members who engage in OTC trading activity in NYSE and Amex securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program is also a tool for Nasdaq to compete against other exchanges (particularly CSE and CHX) that offer similar programs.[7]

Under the Program, Nasdaq calculates two separate pools of revenue from which credits can be earned: One representing 40% of the gross revenues received from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by the CTA (''Tape A''), the other representing 40% of the gross revenue received from the CTA for reporting Amex trades (''Tape B''). Eligibility for transaction credits is based on concurrent quarterly trading activity.[8]

Hitherto, trade reports of ITS and CAES transactions, which are reported to Nasdaq automatically, have been attributed to the sell side of the trade.[9] As an added encouragement for members to provide liquidity for executions through ITS and CAES, however, Nasdaq is modifying the Program to attribute ITS and CAES trades to a member that provides liquidity (*i.e.*, that sells in response to an order to buy or that buys in response to an order to sell). Nasdaq believes that by encouraging the provision of liquidity by InterMarket participants, the proposed rule change will increase the efficiency of InterMarket transactions and enhance the competitiveness of InterMarket vis-a-vis the exchanges with which it competes.

It should be noted that the NASD receives revenue from the CTA for ITS transactions in which an NASD member is the selling party, and under the Program as currently in effect, Nasdaq shares a portion of the revenue with members that are selling parties. By contrast, under the proposed rule change, Nasdaq would share 40% of the revenue it receives from the CTA with NASD members that provide liquidity in a transaction. As a result, in instances where an NASD member executes a sell order that it receives through the ITS, Nasdaq will provide a transaction credit to the NASD member even though NASD receives no revenue from the CTA with respect to the transaction. Similarly, in instances where an NASD member sends a sell order to an exchange through the ITS, Nasdaq would not provide a transaction credit to the NASD member even though NASD does receive revenue from the CTA with respect to the transaction. The total pool of revenue shared with NASD members (40% of Tape A revenue and 40% of Tape B revenue) will not change, however. Moreover, since there is no requirement that Nasdaq share any

[4] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. *See* Securities Exchange Act Release No. 42907 (June 7, 2000); 65 FR 37445 (June 14, 2000) (SR–NASD–00–32).

[5] *See* CAES/ITS User Guide, p. 5, at www.intermarket.nasdaqtrader.com.

[6] *See* Securities Exchange Act Release No. 41174 (Mar. 16, 1999), 64 FR 14034 (Mar. 23, 1999) (SR–NASD–99–13). The SEC issued notice of subsequent extensions of the Program. *See* Securities Exchange Act Release Nos. 42095 (Nov. 3, 1999), 64 FR 61680 (Nov. 12, 1999) (SR–NASD–99–59); 42672 (Apr. 12, 2000), 65 FR 21225 (Apr. 20, 2000) (SR–NASD–00–10); 42907 (June 7, 2000), 65 FR 37445 (June 14, 2000) (SR–NASD–00–32); 43831 (Jan. 10, 2001), 66 FR 4882 (Jan. 18, 2001) (SR–NASD–00–72); 44098 (Mar. 23, 2000), 66 FR 17462 (Mar. 30, 2001) (SR–NASD–01–15); 44734 (Aug. 22, 2001), 66 FR 4537 (Aug. 26, 2001) (SR–NASD–2001–42); 45273 (Jan. 14, 2002), 67 FR 2716 (Jan. 18, 2002) (SR–NASD–2001–92); and 46232 (July 19, 2002), 67 FR 48691 (July 25, 2002) (SR–NASD–2002–94).

[7] *See* Securities Exchange Act Release No. 38237 (Feb. 4, 1997), 62 FR 6592 (Feb. 12, 1997) (SR–CHX–97–01) and Securities Exchange Act Release No. 39395 (Dec. 3, 1997), 62 FR 65113 (Dec. 10, 1997) (SR–CSE–97–12).

[8] Under the current Program, a member must print an average of 500 daily trades of Tape A securities during a quarter to qualify for Tape A sharing and must print an average of 500 daily trades of Tape B securities during a quarter to qualify for Tape B sharing. Nasdaq has filed a separate proposed rule change to seek Commission approval for the elimination of these thresholds, effective retroactively as of July 1, 2002. SR–NASD–2002–111 (Aug. 9, 2002).

[9] Non-ITS/CAES trades that are reported to Nasdaq are attributed to the member identified in the trade report as the executing party, which is either the reporting party or a ''give up'' on whose behalf the trade is reported. The crediting of non-ITS/CAES trades remains unchanged.

of its tape revenue, Nasdaq does not believe that there is any requirement that a plan for sharing tape revenue with NASD members must use the same formula as the plan under which NASD receives the revenue. Indeed, by providing transaction credits to liquidity providers, Nasdaq hopes to encourage members to commit capital to transactions through InterMarket and/or to allow customer orders to interact with orders that they receive through InterMarket. Accordingly, Nasdaq believes that the proposed rule change will foster the provision of additional liquidity through InterMarket, thereby enhancing its efficiency by increasing the likelihood that InterMarket orders will be promptly executed. By contrast, the current program grants credits solely on the basis of whether a member happens to be selling in a particular transaction.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including section 15A(b)(5) of the Act,[10] which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed rule change will lower the cost of conducting business through InterMarket for members that provide liquidity through ITS or CAES. Nasdaq believes that encouraging members to provide liquidity will enhance the efficiency of InterMarket and benefit investors whose trades are routed to InterMarket by increasing the likelihood that they will be promptly executed.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–115 and should be submitted by December 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29242 Filed 11–18–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78o–3(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46818; File No. SR–NASD–2002–147]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Sunsetting Revisions to NASD By-Laws Regarding the Regulatory Fee and SEC Section 31 Transaction Fee Made in SR–NASD–2002–98

November 12, 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 18, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On November 5, 2002, the NASD amended the proposal.[3] The NASD again amended the proposed rule change on November 8, 2002.[4] The Association filed the proposal pursuant to section 19(b)(3)(A) of the Act,[5] and Rule 19b–4(f)(3) thereunder[6] as being concerned solely with the administration of the self-regulatory organization, which renders the proposal effective upon filing with the Commission.[7] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to: (1) Amend Schedule A of the NASD By-Laws to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* November 4, 2002 letter from Barbara Z. Sweeney, Senior Vice President (''SVP'') and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, and attachments (''Amendment No. 1''). Amendment No. 1 completely replaced and superseded the original proposed rule change.

[4] *See* November 7, 2002 letter from Barbara Z. Sweeney, SVP and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, Commission, and attachments (''Amendment No. 2''). Amendment No. 2 completely replaced and superseded Amendment No. 1 and the original filing.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(3).

[7] For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on November 8, 2002, the date the NASD filed Amendment No. 2.

sunset the Trading Activity Fee (''TAF'') established in SR–NASD–2002–98,[8] terminating on December 31, 2002; and (2) correct language in section 2 that was mistakenly referenced in SR–NASD–2002–98. The NASD is sunsetting the changes made in SR–NASD–2002–98 in response to member comments asserting that a full notice and comment period would be beneficial to NASD members. In addition, the NASD would like an opportunity to review the published TAF rates. The NASD also filed SR–NASD–2002–148, a proposed rule change that is substantially similar to SR–NASD–2002–98 under section 19(b)(1) of the Act.

In the instant filing, the NASD is including the TAF rates (retroactively effective to October 1, 2002, but giving members until January 15, 2003 to remit such fees), correcting the heading of section 2, deleting footnotes containing TAF rates (because the rate information is now included in the body of the filing), inserting a reference to a recent *Notice to Members* that discusses the TAF in appropriate footnotes, and making minor technical, non-substantive changes to the filing.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Schedule A to the NASD By-Laws

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Section 2—Member [Regulation] *Regulatory* Fees

(a) Recovery of cost of services. NASD shall, in accordance with this section, collect [M]*m*ember [Regulation] *regulatory* fees that are designed to recover the costs to NASD of the supervision and regulation of members, including performing examinations, processing of membership applications, financial monitoring, *and* policy, rulemaking, interpretive, and enforcement activities. NASD shall periodically review these revenues in conjunction with these costs to determine the applicable rate. NASD shall publish notices of the fees and adjustments to the assessment rates applicable under this section.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

(i) All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness);

(ii) All other equity securities traded otherwise than on an exchange; and

(iii) All security futures wherever executed.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(i) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;

(ii) Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

(iii) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(iv) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(v) Transactions *that* [which]are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3–1 and any approved plan filed thereunder. NASD may exempt other securities and transactions as it deems appropriate. (3) Fee Rates*

(i) Each member shall pay to NASD a fee per share for each sale of a covered *equity* security.

(ii) Each member shall pay to NASD a fee per contract for each sale of an option.

(iii) Each member shall pay to NASD a fee for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.

**Trading Activity Fee rates are as follows: Each member shall pay to NASD $0.00005 per share for each sale of a covered equity security, with a maximum charge of $5 per trade; $0.002 per contract for each sale of an option; and $0.04 per contract for each round turn transaction of a security future. In addition, if the execution price for a covered security is less than the Trading Activity Fee rate ($0.00005 for covered equity securities, $0.002 for covered option contracts, or $0.04 for a security future) on a per share, per contract, or round turn transaction basis then no fee will be assessed.*

(4) Reporting of Transactions. Members shall report to NASD the aggregate share, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by NASD from time to time.

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Section [2] *4*—Fees

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(b) [The] NASD shall assess each member a fee of:

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[(3) $20.00 for each amended Form U–4 or Form U–5 filed by the member with the NASD;]

[(4)]*(3)* $95.00 for the additional processing of each initial or amended Form U–4 or Form U–5 that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings;

[(5)]*(4)* $10.00 for each fingerprint card submitted by the member to [the] NASD, plus any other charge that may be imposed by the United States Department of Justice for processing such fingerprint card; and

[(6)]*(5)* $30.00 annually for each of the member's registered representatives and principals for system processing.

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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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Association has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 24, 2002, the NASD filed SR–NASD–2002–98 and SR–NASD–2002–99, which proposed a new member regulatory pricing structure.[9] With the instant filing (SR–NASD–2002–147), the NASD is establishing a sunset provision for the TAF established by SR–NASD–2002–98. The TAF will cease to exist after December 31, 2002, and the

[8] Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002).

[9] Securities Exchange Act Release Nos. 46416 (Aug. 23, 2002), 67 FR 55901 (Aug. 30, 2002) (SR–NASD–2002–98) and 46417 (Aug. 23, 2002), 67 FR 55893 (Aug. 30, 2002)(SR–NASD–2002–99). The NASD also published three *Notices to Members* describing the proposed changes and addressing interpretive questions posed by NASD members. *See Notice to Members 02–41* (July 2002), *Notice to Members 02–63* (September 2002), and *Notice to Members 02–75* (October 30, 2002).

member regulatory pricing structure will revert to section 8 of Schedule A of the By-Laws as amended, absent further action. The NASD is sunsetting the changes made to the TAF in SR–NASD–2002–98 in response to member comments asserting that a full notice and comment period would be beneficial to NASD members. In addition, the NASD would like an opportunity to review its published rates. Further, the NASD is amending Schedule A, section 2 of the By-Laws, to correct language that was mistakenly referenced in SR–NASD–2002–98.[10] In the instant filing, the NASD is including the TAF rates (retroactively effective to October 1, 2002, but allowing members until January 15, 2003 to remit such fees), correcting the heading of section 2, deleting footnotes in the filing regarding the TAF rates and inserting the rate language into the body of the proposed rule language, inserting a reference to *Notice to Members 02–75* (issued October 30, 2002, and discussing the TAF), and making minor technical, non-substantive changes to the filing.

On September 27, 2002, the NASD announced the initial TAF rates. The TAF rates were as follows:

- $0.0001 per share for each sale of a covered equity security
- $0.002 per contract for each sale of an option
- $0.08 per contract for each round turn transaction of a security future

On October 3, 2002, in response to members' comments, the NASD modified the TAF rates to incorporate a per trade maximum, retroactively effective to October 1, 2002. The revised TAF rates were modified as follows:

- For each sale of a covered equity security, each member shall pay to the NASD $0.0001 per share, with a maximum charge of $10 per trade.
- For each sale of an option, each member shall pay to the NASD $0.002 per contract.
- For each round turn transaction of a security future, each member shall pay to the NASD $0.08 per contract.
- Additionally, if the execution price for a covered equity security is less than the TAF rate ($0.0001) on a per share basis, then no fee will be assessed.

On October 18, 2002, the NASD filed two subsequent proposed rule changes that are directly related to SR–NASD–2002–98. The first is the instant filing (SR–NASD–2002–147), which establishes a sunset provision that terminates on December 31, 2002 the changes made to Schedule A to the NASD By-Laws in SR–NASD–2002–98, and makes corrections to language that was mistakenly referenced in SR–NASD–2002–98. The second proposed rule change is SR–NASD–2002–148, which contains substantially the same proposed rule language that was contained in SR–NASD–2002–98, but is submitted pursuant to section 19(b)(1) of the Act [11] to allow for an additional notice and comment period. The NASD filed SR–NASD–2002–148 in response to comments made by NASD members that the TAF should not be effective upon filing, but instead should be given a full notice and comment period. In addition, this subsequent comment period allows the NASD to examine further the impact of the published TAF rates currently in effect. The NASD will adjust the TAF rates accordingly if the rates are inconsistent with the NASD's overall intent that the amendments to its pricing structure be revenue neutral. The NASD intends that SR–NASD–2002–148 be read in conjunction with SR–NASD–2002–99. The two separate yet related proposed rule changes are the result of a review of the overall NASD pricing structure, and will be used to fund the NASD's member regulatory activities.

On January 1, 2003, if the Commission has not approved SR–NASD–2002–148, the TAF as established in SR–NASD–2002–98 will terminate and will revert to section 8 of Schedule A of the By-Laws as amended, until such time that an approved alternative funding source is in place.

On October 30, 2002, based on further analysis of trading volumes and feedback from member firms, the NASD again adjusted the rate structure. The TAF was revised (retroactively effective to October 1, 2002, but allowing members until January 15, 2003 to remit such fees), as follows:

- The initial rate of $0.0001 for covered equity securities was reduced to $0.00005.
- The maximum charge on covered equity securities was reduced to $5.00.
- The initial rate of $0.08 for security futures was reduced to $0.04.
- The minimum exclusion was extended to cover options and futures, clarifying that if the execution price for a covered security is less than the TAF rate on a per share, per contract, or round turn transaction basis, then no fee will be assessed.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the Act, including section 15A(b)(5) of the Act,[12] which requires, among other things, that the NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [13] and subparagraph (f)(3) of Rule 19b–4 thereunder,[14] because it is concerned solely with the administration of the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[10] In its efforts to amend rule language to reflect its corporate restructuring, the NASD inadvertently added incorrect rule text. The correct rule language cited herein was approved by the Commission in SR–NASD–99–43.

[11] 15 U.S.C. 78s(b)(1).

[12] 15 U.S.C. 78o–3(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(3).

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 Association. All submissions should refer to file number SR–NASD–2002–147 and should be submitted by December 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46817; File No. SR–NASD–2002–148]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to the Regulatory Fee and the SEC Section 31 Transaction Fee

November 12, 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 18, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Association amended the proposed rule change on November 5, 2002.[3] On November 8, 2002, the NASD again amended the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Schedule A to the NASD By-Laws to amend its member regulatory pricing structure. Under the structure this rule proposal is intended to change, three types of fees and assessments are used to fund the NASD's member regulatory activities: Regulatory Fee,[5] Personnel Assessment, and Gross Income Assessment.[6] The proposed restructuring is comprised of four amendments: (1) Eliminate the Regulatory Fee; (2) institute a new transaction-based Trading Activity Fee (''TAF'') similar to the SEC's Section 31 Fee; (3) increase the rates assessed to member firms under the Personnel Assessment; and (4) implement a simplified three-tiered flat rate for the Gross Income Assessment and eliminate current deductions and exclusions.[7] This rule filing is to be read as a part of a package of two separate yet related rule filings[8] submitted to the SEC as a result of a review of the overall NASD pricing structure[9] and is intended to address the first two amendments to NASD pricing restructuring by eliminating the Regulatory Fee and instituting a new transaction-based TAF.

These fees assessed upon and paid by member firms are used by the NASD to fund NASD's member regulatory activities, including the supervision and regulation of members through examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretative, and enforcement activities. These amendments to this pricing structure are intended to serve the following purposes: (1) Simplify the NASD's fee structure; (2) ensure fairness in the NASD's fee structure by assessing higher fees to those member firms that require more NASD regulatory services; (3) assess a transaction-based fee in a manner that, unlike the Regulatory Fee, does not influence where members choose to execute trades; (4) reduce the cyclical nature of the current NASD fee structure; and (5) eliminate the NASD's reliance on funds generated from the Regulatory Fee on transactions executed through Nasdaq.

The NASD believes assessing Regulatory Fees only for Nasdaq transactions is no longer appropriate for three reasons. First, Nasdaq is separating from the NASD and registering as a national securities exchange. Second, the current fee structure is out of step with recent changes in the markets, such as the drastic growth in trading volumes, reductions in average trade size, decimalization, and trading no longer remaining exclusive to the listing exchange. Finally, the Regulatory Fee is only assessed against Nasdaq-listed and other transactions that are reported through the Automated Confirmation Transaction (ACT) system,[10] although these fees are used to support member regulatory activities across all markets.

In the instant proposed rule change, the NASD is including the TAF rates (retroactively effective to October 1, 2002, but giving members until January 15, 2003 to remit fees for the preceding quarter), including a reference to *Notice to Members 02–75* (issued on October 30, 2002 and discussing the TAF), and making minor technical, non-substantive changes to the proposed rule change. In addition, certain footnotes containing TAF rates have been deleted (because the TAF rate information is now included in the body of the proposed rule language).

Below is the text of the proposed rule change. The text below shows amended rule language that would be necessary if SR–NASD–2002–98 were not in place.[11] Proposed new language is in italics; proposed deletions are in brackets.

Schedule A to [the] NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of [the] NASD shall be determined on the following basis.

* * * * *

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* November 4, 2002 letter from Barbara Z. Sweeney, Senior Vice President (''SVP'') and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, and attachments (''Amendment No. 1''). Amendment No. 1 completely replaced and superseded the original proposed rule change.

[4] *See* November 7, 2002 letter from Barbara Z. Sweeney, SVP and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, Commission, and attachments (''Amendment No. 2''). Amendment No. 2 completely replaced and superseded Amendment No. 1 and the original proposed rule change.

[5] The Regulatory Fee is described in section 8(a) of Schedule A to NASD By-Laws.

[6] The Personnel Assessment and Gross Income Assessment are described in Section 1 of Schedule A to NASD By-Laws.

[7] The changes resulting from the proposed restructuring would be revenue neutral.

[8] *See also* SR–NASD–2002–99.

[9] The NASD, in its pricing restructuring review, proposed changes to the Regulatory Fee in *Special Notice to Members 02–09* and requested comments. The NASD received a number of comments. In response to those comments, the proposal set forth in *Special Notice to Members 02–09* is not being pursued.

[10] This package of filings proposed rule changes to NASD's Member Regulation fees. It is not related to the recent Nasdaq filing regarding Nasdaq's Regulatory Fee. *See* Nasdaq SR–NASD–2002–61.

[11] The Commission notes that, because SR–NASD–2002–98 was effective upon filing with the Commission, the rule language that was proposed in SR–NASD–2002–98 is in fact a rule. The Commission recognizes, however, that the instant filing presents rule language that would be necessary if SR–NASD–2002–98 were not an established rule to more clearly demonstrate how the NASD's member regulatory pricing structure is proposed to be amended by the recent filings described in this proposed rule change.

Section [8] *2—Member Regulatory* [Transaction] Fees

[(a) NASD fee on cleared transactions. Each member shall be assessed a transaction charge of $.0625 per 1,000 shares, with a minimum charge per side of $.025 and a maximum charge per side of $.46875 for each over-the-counter transaction with another member of the Association reportable through ACT in which the member acts either as an agent or a principal for the purchase and/or sale of equity securities.]

[(b) SEC transaction fee. Each member shall be assessed a SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act.]

(a) Recovery of cost of services. NASD shall, in accordance with this section, collect member regulatory fees that are designed to recover the costs to NASD of the supervision and regulation of members, including performing examinations, processing of membership applications, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. NASD shall periodically review these revenues in conjunction with these costs to determine the applicable rate. NASD shall publish notices of the fees and adjustments to the assessment rates applicable under this section.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

(i) All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness);

(ii) All other equity securities traded otherwise than on an exchange; and

(iii) All security futures wherever executed.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(i) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;

(ii) Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

(iii) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(iv) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(v) Transactions that are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3–1 and any approved plan filed thereunder.

NASD may exempt other securities and transactions as it deems appropriate.

*(3) Fee Rates**

(i) Each member shall pay to NASD a fee per share for each sale of a covered equity security.

(ii) Each member shall pay to NASD a fee per contract for each sale of an option.

(iii) Each member shall pay to NASD a fee for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.

**Trading Activity Fee rates are as follows: Each member shall pay to NASD $0.00005 per share for each sale of a covered equity security, with a maximum charge of $5 per trade; $0.002 per contract for each sale of an option; and $0.04 per contract for each round turn transaction of a security future. In addition, if the execution price for a covered security is less than the Trading Activity Fee rate ($0.00005 for covered equity securities, $0.002 for covered option contracts, or $0.04 for a security future) on a per share, per contract, or round turn transaction basis then no fee will be assessed.*

(4) Reporting of Transactions. Members shall report to NASD the aggregate share, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by NASD from time to time.

Section 3—SEC Transaction Fee

Each member shall be assessed an SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act.

Section [2] 4—Fees

(a) Each member shall be assessed a fee of $75.00 for the registration of each branch office, as defined in the By-Laws. Each member shall be assessed an annual fee for each branch office in an amount equal to the lesser of (1) $75.00 per registered branch, or (2) the product of $75.00 and the number of registered representatives and registered principals associated with the member at the end of [the Association] *NASD*'s fiscal year.

(b) [The] NASD shall assess each member a fee of:

(1) $85.00 for each initial Form U–4 filed by the member with [the] NASD for the registration of a representative or principal, except that the following discounts shall apply to the filing of Forms U–4 to transfer the registration of representatives or principals in connection with acquisition of all or a part of a member's business by another member:

Number of registered personnel transferred	Discount
1,000—1,999	10%
2,000—2,999	20%
3,000—3,999	30%
4,000—4,999	40%
5,000 and over	50%

(2) $40.00 for each initial Form U–5 filed by the member with [the] NASD for the termination of a registered representative or registered principal, plus a late filing fee of $80.00 if the member fails to file the initial Form U–5 within 30 days after the date of termination;

(3) through (5) No Change.

(c) through (k) No Change.

(l)(1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph, a fee of $100 for each day that such report is not timely filed. The fee will be assessed for a period not to exceed 10 business days. Requests for such extension of time must be submitted to [the Association] *NASD* at least three business days prior to the due date; and

(2) through (3) No Change.

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Section [3] 5—Elimination of Duplicate Assessments and Fees

No Change to rule language.

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Section [4] 6—Assessments and Fees for New Members, Resigning Members and Successor Organizations

(a) The assessment of a firm, which is not a member throughout [the Association] *NASD*'s full calendar year from January 1 to December 31, shall be based upon the number of quarter years of membership. The proration for a new member shall include the quarter year in which the member is admitted to membership. The proration for a member which resigns shall include the quarter year in which the member's letter of resignation is received in [the Association] *NASD*'s Executive Office.

(b) A member [which] *that* is a successor organization to a previous member or members shall assume the unpaid balance of the assessments of its predecessor or predecessors and its next

assessment shall be determined, if applicable, upon the assessment data of its predecessors. Such successor member shall not be required to re-register branch offices and personnel of predecessor members or pay registration fees therefor. Whether a member is the successor organization to a previous member or members shall be determined by [the Association] *NASD* upon a consideration of the terms and conditions of the particular merger, consolidation, reorganization, or succession. A member [which] *that* has simply acquired the personnel and offices of another member under circumstances [which] *that* do not constitute the member a successor organization shall not be required to assume the unpaid assessments of the other member. Such non-successor member shall be required to re-register the branch offices and personnel acquired from the other member and pay applicable registration fees.

Section [5] 7—Gross Revenue for Assessment Purposes

No Change to rule language.

Section [6] *8*—Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) There shall be a fee imposed for the filing of initial documents relating to any offering filed with [the] NASD pursuant to the Corporate Financing Rule equal to $500 plus .01% of the proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall not exceed $30,500. The amount of filing fee may be rounded to the nearest dollar.

(b) There shall be an additional fee imposed for the filing of any amendment or other change to the documents initially filed with [the] NASD pursuant to the Corporate Financing Rule equal to .01% of the net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related Rule 462(b) registration statement, or reflected on any Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall not exceed $30,500.

Section [7] *9*—Service Charge for Processing Extension of Time Requests

(a) No Change.

(b) The service charge for processing each initial extension of time request and for all subsequent extension of time requests (1) involving the same transaction under Regulation T and/or (2) involving an extension of time previously granted pursuant to Rule 15c3–3(n) shall be $2.00; provided, however, that the service charge shall be $1.00 for extension of time requests filed electronically by members using [the Association] *NASD*'s Automated Regulatory Reporting System.

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Section [9] *10*—Subscription Charges for Firm Access Query System (FAQS)

No Change to rule language.

Section [10] *11*—Request for Data and Publications

No Change to rule language.

Section [11] *12*—Reserved

No Change to rule language.

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Section [12] *13*—Application and Annual Fees for Member Firms With Statutorily Disqualified Individuals

(a) Any member firm seeking to employ or continuing to employ as an associated person any individual who is subject to a disqualification from association with a member as set forth in Article III, Section 4 of [the Association] *NASD*'s By-Laws shall, upon the filing of an application pursuant to Article III, Section 3, paragraph (d) of [the Association] *NASD*'s By-Laws, pay to [the Association] *NASD* a fee of $1,500.00. Any member firm whose application filed pursuant to Article III, Section 3, paragraph (d) of [the Association] *NASD*'s By-Laws results in a full hearing for eligibility in [the Association] *NASD* pursuant to the Rule 9640 Series, shall pay to [the Association] *NASD* an additional fee of $2,500.00.

(b) Any member firm continuing to employ as an associated person any individual subject to disqualification from association with a member as set forth in Article III, Section 4 of [the Association] *NASD*'s By-Laws shall pay annually to [the Association] *NASD* a fee of $1,500.00 when such person or individual is classified as a Tier 1 statutorily disqualified individual, and a fee of $1,000.00 when such person or individual is classified as a Tier 2 statutorily disqualified individual.

Section [13] *14*—Review Charge for Advertisement, Sales Literature, and Other Such Material Filed or Submitted

There shall be a review charge for each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to [the Association] *NASD*, except for items that are filed or submitted in response to a written request from [the Association] *NASD*'s Advertising Regulation Department issued pursuant to the spot check procedures set forth in [the Association] *NASD*'s Rules as follows: (1) for printed material reviewed, $75.00, plus $10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, $75.00, plus $10.00 per minute for each minute of tape reviewed in excess of 10 minutes.

Where a member requests expedited review of material submitted to the Advertising Regulation Department there shall be a review charge of $500.00 per item plus $25 for each page reviewed in excess of 10 pages. Expedited review shall be completed within three business days, not including the date the item is received by the Advertising Regulation Department, unless a shorter or longer period is agreed to by the Advertising Regulation Department. The Advertising Regulation Department may, in its sole discretion, refuse requests for expedited review.

* * * * *

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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 24, 2002, the NASD filed SR–NASD–2002–98 and SR–NASD–2002–99, which proposed a new member

regulatory pricing structure.[12] By filing SR–NASD–2002–147, the NASD is establishing a sunset provision for the TAF. The TAF, as established in SR–NASD–2002–98, will cease to exist after December 31, 2002, and the member regulatory pricing structure will revert to section 8 of Schedule A of the By-Laws as amended, absent further action. The NASD is sunsetting the changes made to the TAF in SR–NASD–2002–98 in response to member comments asserting that a full notice and comment period would be beneficial to NASD members. In addition, the NASD would like an opportunity to review its published rates. Further, the NASD is amending Schedule A, section 2 of the By-Laws to correct language that was mistakenly referenced in SR–NASD–2002–98.[13] The instant proposed rule change includes the TAF rates (retroactively effective to October 1, 2002, but allowing members until January 15, 2003 to remit such fees) and inserts the rate language into section 2. In addition, the instant proposed rule change updates certain footnotes to include a reference to *Notice to Members 02–75* (issued October 30, 2002 and discussing the TAF), deletes footnotes that included TAF rates and inserts the TAF rate information in the body of the proposed rule language, and makes minor technical, non-substantive changes to the proposed rule change.

On September 27, 2002, the NASD announced the initial TAF rates. The TAF rates were as follows:

- $0.0001 per share for each sale of a covered equity security.
- $0.002 per contract for each sale of an option.
- $0.08 per contract for each round turn transaction of a security future.

On October 3, 2002, in response to members' comments, the NASD modified the TAF rates to incorporate a per trade maximum, retroactively effective to October 1, 2002. The revised TAF rates were modified as follows:

- For each sale of a covered equity security, each member shall pay to the NASD $0.0001 per share, with a maximum charge of $10 per trade.
- For each sale of an option, each member shall pay to the NASD $0.002 per contract.
- For each round turn transaction of a security future, each member shall pay to the NASD $0.08 per contract.
- Additionally, if the execution price for a covered equity security is less than the TAF rate $0.0001) on a per share basis, then no fee will be assessed.

On October 18, 2002, the NASD filed two subsequent proposed rule changes with the Commission that are directly related to SR–NASD–2002–98. The first proposed rule change was SR–NASD–2002–147, which was effective upon filing with the Commission. SR–NASD–2002–147 established a sunset provision that terminates on December 31, 2002 the changes made to Schedule A to the NASD By-Laws in SR–NASD–2002–98. In addition, language that was mistakenly referenced in SR–NASD–2002–98 was corrected in SR–NASD–2002–147.

The second proposed rule change is the instant filing, which contains substantially the same proposed rule language as proposed in SR–NASD–2002–98, but is filed pursuant to section 19(b)(1) of the Act[14] to allow for an additional notice and comment period. The NASD filed SR–NASD–2002–148 in response to comments made by NASD members that the TAF should not be filed as immediately effective, but instead should be given a full notice and comment period. In addition, this subsequent comment period allows the NASD to examine further the impact of the published TAF rates currently in effect, and to adjust the TAF rates accordingly if they are inconsistent with the NASD's overall intent that the amendments to its pricing structure be revenue neutral. The NASD intends that SR–NASD–2002–148 be read in conjunction with SR–NASD–2002–99. The two separate yet related proposed rule changes are the result of a review of the overall NASD pricing structure, and will be used to fund the NASD's member regulatory activities.

On January 1, 2003, if the Commission has not approved SR–NASD–2002–148, the TAF as established in SR–NASD–2002–98 will terminate and will revert to Section 8 of Schedule A of the By-Laws as amended, until such time that an approved alternative funding source is in place.

On October 30, 2002, based on further analysis of trading volumes and feedback from member firms, the NASD further adjusted the rate structure. The NASD revised the TAF (retroactively effective to October 1, 2002, but allowing members until January 15, 2003 to remit such fees), as follows:

- The initial rate of $0.0001 for covered equity securities was reduced to $0.00005.
- The maximum charge on covered equity securities was reduced to $5.00.
- The initial rate of $0.08 for security futures was reduced to $0.04.
- The minimum exclusion was extended to cover options and futures, clarifying that if the execution price for a covered security is less than the TAF rate on a per share, per contract, or round turn transaction basis, then no fee will be assessed.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the Act, including section 15A(b)(5) of the Act,[15] which requires among other things, that the NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. The NASD believes that the TAF is objectively allocated to NASD members. Moreover, the NASD believes that the level of the fee is reasonable because it relates to the recovery of the costs of supervising and regulating members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received on the current proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

[12] Securities Exchange Act Release Nos. 46416 (Aug. 23, 2002), 67 FR 55901 (Aug. 30, 2002)(SR–NASD–2002–98) and 46417 (Aug. 23, 2002), 67 FR 55893 (Aug. 30, 2002)(SR–NASD–2002–99). The NASD also published three Notices to Members describing the proposed changes and addressing interpretive questions posed by NASD members. See Notice to Members 02–41 (July 2002), Notice to Members 02–63 (September 2002), and Notice to Members 02–75 (October 30, 2002).

[13] In its efforts to amend rule language to reflect its corporate restructuring, the NASD inadvertently added incorrect rule text. The correct rule language cited herein was effective upon filing in SR–NASD–99–43. See Securities Exchange Act Release No. 41937 (September 28, 1999), 64 FR 53762 (October 4, 1999).

[14] 15 U.S.C. 78s(b)(1).

[15] 15 U.S.C. 78o–3(b)(5).

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD–2002–148 and should be submitted by December 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29316 Filed 11–18–02; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46802; File No. SR–NYSE–2001–46]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Amending Section 804 to the NYSE Listed Company Manual and NYSE Rule 499

November 8, 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 29, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 30, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On November 7, 2002, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 804 of the NYSE Listed Company Manual and NYSE Rule 499 to make the procedures for appealing delisting determinations more efficient and effective, and to charge issuers a non-refundable appeal fee in the amount of $20,000. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

804.00 Procedure for Delisting

• If the Exchange staff should determine that a security be removed from the list, it will so notify the issuer in writing, describing the basis for such decision and the specific policy or criterion under which such action is to be taken. The Exchange will simultaneously (1) issue a press release disclosing the company's status and basis for the Exchange's determination and (2) begin daily dissemination of ticker and information notices identifying the security's status, and include similar information on the Exchange's web site.

• The notice to the issuer shall also inform the issuer of its right to a review of the determination by a Committee of the Board of Directors of the Exchange (comprised of a majority of public Directors), provided a written request for such a review is filed with the Secretary of the Exchange within ten business days after receiving the aforementioned notice. *Such written request must state with specificity the grounds on which the issuer intends to challenge the determination of the Exchange staff, must indicate whether the issuer desires to make an oral presentation to the Committee, and must be accompanied or preceded by payment of a non-refundable appeal fee in the amount of $20,000.* [Such review will be conducted on the next monthly Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange. If the next Review Day is in less than 25 business days, the review will be scheduled for the following Review Day.]

• If the issuer does not request a review within the specified period, the Exchange shall suspend trading in the security and an application shall be submitted by the Exchange staff to the Securities and Exchange Commission to strike the security from listing and a copy of such application shall be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder.

• If a review is requested, the review will be [conducted by a Committee of the Board of Directors.] *scheduled for the first Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange, unless the next subsequent Review Day must be selected to accommodate the Committee's schedule. The Committee's review shall be based on oral argument (if any) and the written briefs and accompanying materials submitted by the parties. The company shall not be permitted to argue grounds for reversing the staff's decision that are not identified in its request for review, however, the company may ask the Committee for leave to adduce additional evidence or raise arguments not identified in its request for review, if it can demonstrate that the proposed additional evidence or new arguments are material to its request for review and that there was reasonable ground for not adducing such evidence or identifying such issues earlier. This section shall not, however, (i) authorize a company to seek to file a reply brief in support of its request for review or (ii) be deemed to limit the staff's response to a request for review to the issues raised in the request for review. Upon review of a properly supported request, the Committee may in its sole discretion permit new arguments or additional evidence to be raised before the Committee. Following such event, the Committee may, as it deems appropriate, (i) itself decide the matter, or (ii) remand the matter to the*

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 29, 2002 (''Amendment No. 1''). Amendment No. 1 replaces the original proposed rule change in its entirety, and clarifies: (1) The scope of the NYSE Committee for Review's review on appeal; (2) that neither document discovery nor depositions are available; and (3) the rationale for requiring payment of a non-refundable fee in connection with a request for review.

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission (''Amendment No. 2''). Amendment No. 2 makes a technical correction to the proposed rule change.

staff for further review. Should the Committee remand the matter to the staff, the Committee will instruct the staff to (i) give prompt consideration to the matter, and, (ii) complete its review and inform the Committee of its conclusions no later than seven (7) days before the first Review Day which is at least 25 business days from the date the matter is remanded to the staff.

• A request for review will ordinarily stay the suspension of the subject security pending the review, but the Exchange staff may immediately suspend from trading any security pending review should it determine that such immediate suspension is necessary or appropriate in the public interest, for the protection of investors, or to promote just and equitable principles of trade.

• *Promptly following receipt of a request for review and the appeal fee, the Exchange's Office of the General Counsel will notify the issuer and the Exchange staff of the scheduled Review Day and the briefing schedule. The schedule will be set by the Office of the General Counsel so as to provide the Committee adequate time to review materials submitted to it, with the remaining time split so as to afford the issuer and the Exchange staff substantially equal periods for the submission of a brief by the issuer and a responsive brief by the Exchange staff.* [Any brief or memorandum dealing with the issuer's or the Exchange staff's position as well as any other written material which the aforementioned parties want the Committee to consider must be received by the Office of the General Counsel of the Exchange within 17 business days from the date the issuer receives the notice of its right to a review so that such material can be furnished to the members of the Committee.] Each party must [also serve such materials] *submit its brief and any accompanying materials to* [on]*both* its counterparty [simultaneously with the submission to] *and to* the Office of the General Counsel of the Exchange, *and must do so by means calculated to ensure the party's submission reaches both the Office of the General Counsel and the counterparty at or prior to the deadline specified in the briefing schedule.* [The counterparty service must be made in the same manner as such material is filed with the Office of the General Counsel of the Exchange.]

• The Committee, in its sole discretion upon written motion of either party or upon its own motion, may extend any of the time periods specified above. *The Committee in its sole discretion* [and] may permit the parties to make oral presentations on their Review Day in accordance with such procedures as the Committee may specify at the time. If the Committee denies a request by either party to make an oral presentation, its reason for doing so must be included in its written decision on the review, which decision is provided to all parties. *Document discovery and depositions will not be permitted.*

• If the Committee decides that the security of the issuer should be removed from listing, the Exchange shall suspend trading in the security as soon as practicable and an application shall be submitted by the Exchange to the Securities and Exchange Commission to strike the security from listing and registration and a copy of such application shall be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder. If the Committee decides that the security should not be removed from listing, the issuer will receive from the Exchange a notice to that effect.

* * * * *

Rule 499

Delisting of Securities

Suspension from Dealings or Removal From List by Action of the Exchange

* * * * *

* * * Supplementary Material:

.70 Procedure for Delisting.

a. If the Exchange staff should determine that a security be removed from the list, it will so notify the issuer in writing, describing the basis for such decision and the specific policy or criterion under which such action is to be taken. The Exchange will simultaneously: (1) Issue a press release disclosing the company's status and basis for the Exchange' s determination and (2) begin appending a suffix to the security's ticker symbol identifying the security's status. The notice to the issuer shall also inform the issuer of its right to a review of the determination by a Committee of the Board of Directors of the Exchange (comprised of a majority of public Directors), provided a written request for such a review is filed with the Secretary of the Exchange within ten business days after receiving the aforementioned notice. *Such written request must state with specificity the grounds on which the issuer intends to challenge the determination of the Exchange staff, must indicate whether the issuer desires to make an oral presentation to the Committee, and must be accompanied or preceded by payment of a non-refundable appeal fee in the amount of $20,000.* [Such review will be conducted on the next monthly Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange. If the next Review Day is in less than 25 business days, the review will be scheduled for the following Review Day.]

b. If the issuer does not request a review within the specified period, the Exchange shall suspend trading in the security and an application shall be submitted by the Exchange staff to the Securities and Exchange Commission to strike the security from listing and a copy of such application shall be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder.

c. If a review is requested, the review will be [conducted by a Committee of the Board of Directors.] *scheduled for the first Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange, unless the next subsequent Review Day must be selected to accommodate the Committee's schedule. The Committee's review shall be based on oral argument (if any) and the written briefs and accompanying materials submitted by the parties. The company shall not be permitted to argue grounds for reversing the staff's decision that are not identified in its request for review, however, the company may ask the Committee for leave to adduce additional evidence or raise arguments not identified in its request for review, if it can demonstrate that the proposed additional evidence or new arguments are material to its request for review and that there was reasonable ground for not adducing such evidence or identifying such issues earlier. This section shall not, however, (i) authorize a company to seek to file a reply brief in support of its request for review or (ii) be deemed to limit the staff's response to a request for review to the issues raised in the request for review. Upon review of a properly supported request, the Committee may in its sole discretion permit new arguments or additional evidence to be raised before the Committee. Following such event, the Committee may, as it deems appropriate, (i) itself decide the matter, or (ii) remand the matter to the staff for further review. Should the Committee remand the matter to the staff, the Committee will instruct the staff to (i) give prompt consideration to the matter, and, (ii) complete its review and inform the Committee of its conclusions no later than seven (7) days before the first Review Day which is at least 25 business days from the date the matter is remanded to the staff.*

A request for review *will* ordinarily stay the suspension of the subject security pending the review, but the Exchange staff may immediately suspend from trading any security pending review should it determine that such immediate suspension is necessary or appropriate in the public interest, for the protection of investors, or to promote just and equitable principles of trade.

d. *Promptly following receipt of a request for review and the appeal fee, the Exchange's Office of the General Counsel will notify the issuer and the Exchange staff of the scheduled Review Day and the briefing schedule. The schedule will be set by the Office of the General Counsel so as to provide the Committee adequate time to review materials submitted to it, with the remaining time split so as to afford the issuer and the Exchange staff substantially equal periods for the submission of a brief by the issuer and a responsive brief by the Exchange staff.* [Any brief or memorandum dealing with the issuer's or the Exchange staff's position as well as any other written material which the aforementioned parties want the Committee to consider must be received by the Office of the General Counsel of the Exchange within 17 business days from the date the issuer receives the notice of its right to a review so that such material can be furnished to the members of the Committee.] Each party must [also serve such materials] *submit its brief and any accompanying materials to* [on]*both* its counterparty [simultaneously with the submission to]*and to* the Office of the General Counsel of the Exchange, *and must do so by means calculated to ensure the party's submission reaches both the Office of the General Counsel and the counterparty at or prior to the deadline specified in the briefing schedule.* [The counterparty service must be made in the same manner as such material is filed with the Office of the General Counsel of the Exchange.]

e. The Committee, in its sole discretion upon written motion of either party or upon its own motion, may extend any of the time periods specified above. *The Committee in its sole discretion* [and] may permit the parties to make oral presentations on their Review Day in accordance with such procedures as the Committee may specify at the time. If the Committee denies a request by either party to make an oral presentation, its reason for doing so must be included in its written decision on the review, which decision is provided to all parties. *Document discovery and depositions will not be permitted.*

f. If the Committee decides that the security of the issuer should be removed from listing, the Exchange shall suspend trading in the security as soon as practicable and an application shall be submitted by the Exchange to the Securities and Exchange Commission to strike the security from listing and registration and a copy of such application shall be furnished to the issuer in accordance with section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder. If the Committee decides that the security should not be removed from listing, the issuer will receive from the Exchange a notice to that effect.

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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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 804 of the NYSE *Listed Company Manual* and NYSE Rule 499 describe the procedures to be followed when the Exchange determines that a security should be removed from listing with the Exchange. They provide that the issuer has a right to request a review of the Exchange's determination by a committee of the Exchange's Board of Directors (''Committee For Review'' or ''Committee''), and contains the procedures to be followed in connection with such an appeal. In 2000, the SEC approved certain changes in the appeal procedures to allow companies to continue to trade on the Exchange during the appeal process, and set certain time parameters intended to ensure that appeals for delisting determinations are handled expeditiously by the Exchange.[5] After more than a year's experience under the new procedures, the Exchange believes that certain changes are needed to make the process more efficient and effective, for both issuers and the Committee.

Under the current procedures, both the issuer and the Exchange staff are required to file their appeal briefs at the same time. In contrast, the Exchange asserts that most court procedures call for the appellant to submit its brief first. This allows the respondent to focus on the arguments advanced by the appellant, rather than having to speculate on what issues the appellant will raise. The Exchange believes that having the appellant submit its brief first would more effectively utilize the resources of both the Committee and the Exchange staff. Accordingly, the Exchange proposes to amend the procedures to specify that the issuer will submit its written brief first, including any accompanying materials, with the Exchange permitted to respond. In addition, the Exchange proposes to clarify that the briefing schedule will be set to provide the Committee with adequate time to review the materials submitted to it in advance of the review date.

The Exchange's Office of the General Counsel, which oversees the appeals process on behalf of the Committee, will schedule reviews on the first review day that is at least 25 business days from the date an issuer files the request for review, unless the next subsequent Review Day must be selected to accommodate the Committee's schedule,[6] and can establish a briefing schedule that takes account of both the Committee's caseload and the complexities of the specific case. To assist in the Committee's evaluation, an issuer will be required to specify in its written request for review the grounds on which it intends to challenge the Exchange staff's determination, and whether it is requesting to make an oral presentation to the Committee. To cover other procedural questions, the Exchange proposes to specify in the procedures that document discovery and depositions are not permitted.

The Exchange also proposes to specify in its appeal procedures the scope of the Committee's review on appeal and the guidelines pursuant to which the Committee may decide to hear new issues or evidence not identified in an issuer's original request for review.[7] The

[5] *See* Securities Exchange Act Release No. 42863 (May 30, 2000), 65 FR 36488 (June 8, 2000) (File No. SR–NYSE–99–30).

[6] The Committee For Review typically meets every two months.

[7] In this regard, the Commission specifically notes that the NYSE's proposal would not permit the issuer to argue grounds for reversing the NYSE staff's decision that are not identified in its request for review. However, the issuer would be permitted to ask the Committee for leave to adduce additional evidence or raise arguments not identified in its

Continued

proposed rule changes states that the Committee for Review's review shall be based on oral argument (if any) and the written briefs and accompanying materials submitted by the parties. Typically, accompanying materials include materials the issuer or NYSE staff relies on in support of its position and are supplied as exhibits to the brief submitted by the party.

In addition, the Exchange proposes to institute a non-refundable appeal fee in the amount of $20,000. The Exchange has not previously considered it necessary to charge a separate fee to companies appealing an Exchange delisting decision. The Exchange believes that this historical approach, however, has to be considered in the context of the delisting and related appeal policies in effect at the time. According to the Exchange, changes in policies and procedures adopted or formalized in 1999 have resulted in a larger number of companies being delisted, compared to prior years.[8] More recently, the Exchange notes that the percentage of delistings that are appealed has significantly increased, a result the Exchange ascribes to the changes made to the appeal procedures in 2000, whereby a company that has appealed a delisting would likely be permitted to trade on the Exchange during the appeal process. In a 21-month period since the new appeal procedures were in effect, there were 18 appeals out of 114 delisting determinations. In contrast, during the previous 21 months, there were only 6 appeals out of 104 delisting determinations. In sum, there are now more potential appellants, and they are appealing at a greater rate. Finally, while difficult to evidence with statistics, the Exchange staff is also under the impression that the appeals since the rule change have been more zealously contended by the companies involved, compared with previous years.

The Exchange has elected to use outside counsel to represent the Exchange's Financial Compliance staff in these delisting appeals. During the 12 months ending December 31, 2001, the Exchange paid slightly in excess of $300,000 in legal fees to cover 11 delisting appeals completed during that time, giving an average out of pocket cost of slightly less than $30,000 for each appeal. This does not include the resources of the Exchange's own Financial Compliance and Office of the General Counsel personnel consumed in servicing these appeals. The Exchange considers it only fair and appropriate that the companies incurring these added out of pocket costs defray these costs by paying the proposed $20,000 appeal fee.

The Exchange does not believe that the appeal fee will deter companies from taking reasonable appeals. Most companies that do appeal Exchange staff determinations are represented in that appeal by their own outside counsel, suggesting that they are able to invest a significant sum in the prosecution of their appeal. While the proposed Exchange appeal fee is greater than the amount charged at other listing markets, the Exchange notes that its original and continuing annual listing fees are also higher than those at other markets, and that its listed company population in general represents larger capitalization companies than on the other markets. The Exchange also notes that, particularly in the case of companies that have been delisted after attempting to utilize the financial plan process outlined in Section 802 of the NYSE *Listed Company Manual*, companies delisted by the Exchange typically have received a significant quantum of service and attention from the Exchange's Financial Compliance staff. For these reasons the Exchange believes that companies electing to appeal a delisting decision can bear, and should pay, the $20,000 appeal fee that has been proposed.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, 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 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–NYSE–2001–46 and should be submitted by December 10, 2002.

request for review, if it can demonstrate that the proposed additional evidence or new arguments are material to its request for review and that there was reasonable ground for not adducing such evidence or identifying such issues earlier. The proposed rule language would not, however, (i) authorize an issuer to seek to file a reply brief in support of its request for review or (ii) be deemed to limit the NYSE staff's response to a request for review to the issues raised in the request for review. Upon review of a properly supported request, the Committee may in its sole discretion permit new arguments or additional evidence to be raised before the Committee. Following such event, the Committee may, as it deems appropriate, (i) itself decide the matter, or (ii) remand the matter to the NYSE staff for further review. Should the Committee remand the matter to the staff, the proposed rules provide that the Committee will instruct the staff to (i) give prompt consideration to the matter, and, (ii) complete its review and inform the Committee of its conclusions no later than seven (7) days before the first Review Day which is at least 25 business days from the date the matter is remanded to the staff.

[8] For example, there were an average of 22 financial delistings per year during the three years from 1996 through 1998, but an average of 61 per year during the period 1999 through 2001.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29244 Filed 11–18–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46816; File No. SR–NYSE–2002–56]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Arbitration

November 12, 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 30, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange.[3] On November 8, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to amend Rule 600 relating to arbitrations for a six-month pilot period. During this six-month pilot period, the amendment to Rule 600 will require industry parties in arbitration to waive application of the California arbitrator disclosure standards upon the request of customers that have waived the application. The amendment will also require industry parties in arbitration to waive application of the California arbitrator disclosure standards upon the request of associated persons. Below is the text of the proposed rule change, as well as the text of two forms relating to the waiver procedures that the Exchange proposes to distribute pursuant to the terms of the proposed rule change. Proposed new language is *italicized.*

* * * * *

New York Stock Exchange, Inc.

Constitution and Rules

* * * * *

Arbitration

* * * * *

Rule 600

(g) This paragraph applies to the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations promulgated by the Judicial Council of California (the ''California Standards''), which, were they to have effect in connection with arbitrations conducted pursuant to this Code, would conflict with this Code.

In light of this conflict, the affected customer(s) or an associated person of a member or member organization who asserts a claim against the member or member organization with which she or he is associated may:

- *Request the Director to appoint arbitrators and schedule a hearing outside California, or*
- *Waive the California Standards and request the Director to appoint arbitrators and schedule a hearing in California. A written waiver by a customer or associated person who asserts a claim against the member or member organization with which he or she is associated on a form provided by the Director of Arbitration under this Code shall also constitute and operate as a waiver for all other parties to the arbitration who are members, allied members, member organizations, and/or associated persons of a member or member organization.*

* * * * * *

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.[5] The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is intended to provide options to customers and associated persons in California whose claims in arbitration cannot proceed because of the state's adoption of a law, and the Ethics Standards for Neutral Arbitrators in Contractual Arbitration (''the California Standards'') promulgated thereunder, that purport to apply to arbitrations conducted pursuant to Exchange rules. The California Standards, were they to have effect, would conflict with the Exchange's arbitration rules.

The proposed amendment to Rule 600 responds to the purported imposition of California state law on arbitrations conducted under the auspices of the Exchange and pursuant to a set of nationally-applied rules approved by the Commission. On July 1, 2002, as a result of the purported application to Exchange arbitrations and arbitrators of the California Standards, the Exchange suspended the appointment of arbitrators for cases pending in California. The Exchange, along with NASD Dispute Resolution, Inc. (the ''NASD''), is seeking a judgment in the United States District Court for the Northern District of California declaring that the California Standards are preempted by the Act and the Federal Arbitration Act. The SEC has sought leave to appear as a friend of the court (''amicus curiae'') in the litigation and has submitted a brief that argues that the California Standards are preempted by the Act and by the Federal Arbitration Act.[6]

Shortly after filing the declaratory judgment action, the Exchange began to offer customers the option to have their cases heard outside of California. This proposed amendment enables the Exchange to offer customers in California the additional option of having their cases heard in California if they choose to waive application of the California Standards.

In disputes between a customer and a member, allied member, member organization, and/or associated person

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission corrected a typographical error, and added a reference to define the duration of the proposed pilot period, to the description of the proposed rule change, with the consent of the Exchange. Telephone conversation between Robert S. Clemente, Director of Arbitration, NYSE, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, (November 7, 2002).

[4] Amendment No. 1 made technical edits to the proposed rule text.

[5] The discussion in this section represents the NYSE's views on the situation in California and does not in any way represent a Commission position on this issue.

[6] *See* Brief of the Securities and Exchange Commission, Amicus Curiae, in Support of Plaintiffs' Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc. v. Judicial Council of California,* No. C 02 3486 SBA (N.D. Cal.). The brief is available on the SEC Web site at: *http://www.sec.gov/litigation/briefs/nasddispute.pdf.*

of a member or member organization, customers affected by the conflicting California Standards may elect to either have the arbitration hearing in another state, or waive the California Standards and have the hearing in California. The customer's waiver operates to waive the California Standards for any other party who is a member, allied member, member organization, and/or associated person of a member or member organization. Under the proposed amendment, the Exchange would also offer the waiver option to an associated person of a member or member organization who asserts a claim against the member or member organization with which she or he is associated. The Exchange is proposing that Rule 600(g) be adopted as a six-month pilot amendment, from November 12, 2002 to May 12, 2003,[7] during which period the Exchange's Director of Arbitration will monitor the progress of the above-described litigation and determine whether there is a continuing need for the waiver option.

Customers or associated persons who requested, between July 1, 2002 and the effective date of this proposed rule, that a hearing be held outside of California, but have not had arbitrators appointed, may choose to sign the waiver, which will void their previous request for a hearing outside of California. Customers or associated persons who elect, after the effective date of this proposed rule, to have a hearing held outside of California may not subsequently rescind that choice.

The Exchange will notify parties (and their representatives, if any) who currently are awaiting the appointment of arbitrators in California of the terms of this new rule upon its approval by the Commission, and will provide them with the waiver forms.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of section 6(b)(5) of the Act,[8] in that they promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

[7] The Commission adjusted the proposed pilot period based on the date that the Commission approved the proposed rule change. Telephone conversation between Robert S. Clemente, Director of Arbitration, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, (November 8, 2002).

[8] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NYSE. All submissions should refer to File No. NYSE–2002–56 and should be submitted by December 10, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Act.[9] Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[10] The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval is necessary to protect investors in that the rules are designed to help address the backlog of cases created by the confusion over the new California Standards, are designed to provide them with a mechanism to help resolve their disputes with broker-dealers in a more expedited manner, and are designed to help ensure the certainty and finality of arbitration awards. Additionally, the proposed rule change will become effective as a pilot program for six months, from November 12, 2002 to May 12, 2003, during which time the Commission and NYSE will monitor the status of the previously discussed litigation.

[9] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–2002–56) is hereby approved on an accelerated basis through May 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29313 Filed 11–18–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46805; File No. SR–PCX–2002–62]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., to Amend the PCX's Market Data Revenue Sharing Program for Tape A Securities Traded on the Archipelago Exchange

November 8, 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 4, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary, PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

III below, which Items have been prepared by PCXE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through PCXE, proposes to modify its market data revenue sharing program for Tape A securities traded on the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX proposes to amend its fee schedule for services provided to ETP Holders [3] and Sponsored Participants [4] (collectively ''Users'') on the ArcaEx by increasing the level of the transaction credits paid to Users with respect to transactions in issues listed on the New York Stock Exchange (''Tape A'' securities) that are traded on ArcaEx.

Background

On May 28, 2002, the Exchange filed with the Commission a proposed rule change to implement, on a pilot basis through June 28, 2002, a mechanism for sharing market data revenue with Users on ArcaEx.[5] The proposed rule change was effective upon filing, and the PCXE implemented the program on June 1, 2002. On June 27, 2002, the Exchange filed with the Commission a proposed rule change to extend the market data revenue pilot program through August 30, 2002.[6] On July 2, 2002, the Commission summarily abrogated the PCX's proposed rule change and certain proposed rule changes of the National Association of Securities Dealers, Inc. and the Cincinnati Stock Exchange relating to market data revenue sharing.[7] Accordingly, on July 9, 2002, the PCX filed with the Commission a proposed rule change to reinstate its market data revenue sharing program, and to reduce the level of the transaction credits paid to Users with respect to transactions in issues listed on the American Stock Exchange (''Tape B'' securities).[8] On August 6, 2002, the PCX filed a similar proposed rule change to reinstate its market data revenue sharing program for Tape A securities.[9] Both SR–PCX–2002–42 and SR–PCX–2002–56 were effective upon filing with the Commission. The PCX subsequently amended its Tape A revenue sharing program on September 30, 2002, reducing the transaction credits from 50% to 40% per qualifying transaction.[10]

With the instant proposed rule change, the Exchange proposes to modify its Tape A market data revenue sharing program by increasing the level of the transaction credits paid to Users with respect to transactions in such securities from 40% to 50%. No other changes are proposed at this time.

Summary of Proposed Changes

Under the current market data revenue sharing program for Tape A securities, the Exchange shares 40% of its gross revenues derived from related market data fees with (i) any User that provides liquidity in a Tape A security by entering a resting limit order into the ArcaEx Book that is then executed against an incoming marketable order within the Display Order, Working Order, or Tracking Order processes; (ii) any Market Maker that executes against a Directed Order in a Tape A security within the Directed Order Process;[11] and (iii) any User that represents all of one side and all or a portion of the other side of a Cross Order [12] execution in a Tape A security. The Exchange is seeking to increase the level of the transaction credits from 40% to 50% (per qualifying transaction) that will be paid to a User that meets the requirements stated above. The proposed increase in the Tape A revenue credit is intended to create additional incentives to market participants to provide liquidity on the ArcaEx facility.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) [13] of the Act, in general, and furthers the objectives of section 6(b)(5),[14] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

The Exchange also believes that the proposal is consistent with section 6(b)(4)[15] of the Act, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

[3] *See* PCXE Rule 1.1(n).

[4] A ''Sponsored Participant'' is ''a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to (PCXE) Rule 7.29.'' *See* PCXE Rule 1.1(tt).

[5] *See* Securities Exchange Act Release No. 46070 (June 12, 2002), 67 FR 42089 (June 20, 2002) (SR–PCX–2002–28).

[6] *See* SR–PCX–2002–37.

[7] *See* Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR–PCX–2002–37, SR–NASD–2002–61, SR–NASD–2002–68, and Sr–CSE–2002–06) (Order of Summary Abrogation).

[8] *See* Securities Exchange Act Release No. 46293 (August 1, 2002), 67 FR 51314 (August 7, 2002) (SR–PCX–2002–42).

[9] *See* File No. SR–PCX–2002–56.

[10] *See* File No. SR–PCX–2002–61.

[11] The Directed Order Process is the first step in the ArcaEx execution algorithm. Through this Process, Users may direct an order to a Market Maker with whom they have a relationship and the Market Maker may execute the order. To access this process, the User must submit a Directed Order, which is a market or limit order to buy or sell that has been directed to the particular market maker by the User. *See* PCXE Rule 7.37(a) (description of ''Directed Order Process'').

[12] A Cross Order is defined as a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the cross price), subject to price improvement requirements. *See* PCXE Rule 7.31(s).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78f(b)(4).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PCX consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

On July 2, 2002, the Commission issued an Order abrogating certain proposed rule changes relating to market data revenue sharing programs.[16] In that Order, the Commission expressed concern that the subject proposed rule changes raised ''serious questions as to whether they are consistent with the Act and with the protection of investors.'' Specifically, the Commission questioned the effect of market data rebates on the accuracy of market data, and on the regulatory functions of self-regulatory organizations.

The Commission now solicits comment on the instant proposed rule change, and in general, on (1) market data fees; (2) the collection of market data fees; (3) the distribution of market data rebates; (4) the effect of market data revenue sharing programs on the accuracy of market data; and (5) the impact of market data revenue sharing programs on the regulatory functions of self-regulatory organizations.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–PCX–2002–62, and should be submitted by December 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29241 Filed 11–18–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46804; File No. SR–PCX–2002–65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

November 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2002, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The PCX filed Amendment No. 1, which replaces the original filing in its entirety, on November 7, 2002. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its Schedule of Fees and Charges with respect to the following fees for options: broker-dealer and market maker transaction charges, the continued listings fee, and the shortfall fee. The text of the proposed rule change is below. New text is italicized; deleted text is in brackets.

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

PCX Options: Trade-Related Charges	
Transactions:	
Customer	$0.00 per contract side.
PCX Market Maker	$0.21 per contract side.
Firm	$0.10 per contract side for customer facilitation.
Broker/Dealer	[$0.19] *$0.21* per contract side.
PCX Options: Floor and Market Maker Fees	
Continued Listings Fee	Difference between $500 and average monthly revenue for issues with less than $500 in volume based charges (average monthly revenue based on trailing 3 months). *The fee will be capped at $15,000 per month per LLM firm.*
Shortfall Fee	$.35 per contract on shortfall volume.*

• Only applies to the top 120 options. Shortfall volume is the difference between 12% of the total national market share in an option issue for one month and the percentage executed by the LMM. *For the purpose of this calculation, the national market share of any equity option industry volume*

[16] Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37) (Order of Summary Abrogation).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 217 CFR 240.19b–4.

will be capped at 2.9 million contracts per day.

* * * * *

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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of those statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PCX is proposing to change its broker-dealer transaction charge, market maker transaction charges, continued listings fee, and shortfall fee effective with the October 2002 trading month.[3] Other than the fees listed herein, the PCX does not seek to make any other changes to its fee schedule.

1. Broker-Dealer Transaction Charge

The PCX currently imposes a fee of $0.19 per contract side on all transactions of broker-dealers. The PCX proposes to increase this fee to $0.21 per contract side, which would bring the transaction fee to the same level as the PCX Market Maker transaction charge.

2. Continued Listing Fee

The PCX currently imposes upon LMMs a continued listing fee for issues that have not generated at least $500 in monthly revenues to the PCX on a trailing three-month average basis.[4] The continued listing fee is calculated as the incremental difference between the $500 threshold and the amount of revenue that the issue generates. The PCX proposes to cap the amount of the continued listings fee that can be charged to an LMM firm at $15,000 per month per LMM firm.

The PCX also proposes to modify the continued listing fee in order to adjust the method of calculating the average monthly volume-based charges for recently transferred issues. Currently, LMM firms that are transferred issues from another LMM assume the continued listings fee from the transferring firm. To help foster demand for issues during a period of continuing consolidation among trading firms, the PCX proposes to modify the way the continued listings fee is applied to transferred issues. Under the PCX's proposal, an LMM would not be subject to the continued listings fee for an issue that it acquired by transfer for any portion of the month that it acquired the issue, assuming a mid-month transfer. The LLM firm would be subject to a fee based upon the activity of the first full month that it trades an issue. After the second full month of trading the issue, the transferee LMM would be subject to a continued listings fee based upon the trailing two-month activity level. In future months, the transferee LMM would be subject to the fee based on a three-month rolling average.

3. Shortfall Fee

In June 2002, the PCX increased the LMM shortfall fee from 10% to 12% for the top 120 equity options traded nationally. Due to periodic spikes in national industry volume, the PCX proposes to cap the shortfall fee when equity industry volume reaches 2.9 million contracts per day or higher. As proposed, LMM firms would not be charged a shortfall fee on contracts in a top 120 issue that exceeds the calculated volume cap amount.

The PCX believe that the proposal is consistent with section 6(b)(4) of the Act[5] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)[7] because it changes the PCX fee schedule. At any time within 60 days after the filing of Amendment No. 1 to the the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–65 and should be submitted by December 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29245 Filed 11–18–02; 8:45 am]

BILLING CODE 8010–01–P

[3] In its original filing, which the PCX filed with the Commission on September 27, 2002, the PCX proposed to increase from $0.21 to $0.26 the transaction fee imposed on members for orders that originate from non-PCX options market makers. The PCX subsequently withdrew that particular proposed fee change when it filed Amendment No. 1 with the Commission on November 7, 2002.

[4] See Securities Exchange Act Release No. 42050 (October 21, 1999), 64 FR 58117 (October 28, 1999) (SR–PCX–99–32)

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3460]

State of Alabama

Henry County and the contiguous counties of Barbour, Dale and Houston in the State of Alabama; and Clay, Early

and Quitman in the State of Georgia constitute a disaster area due to damages caused by severe storms and tornadoes on November 5, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 13, 2003 and for economic injury until the close of business on August 13, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	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 346011 for Alabama and 346111 for Georgia. The number assigned to this disaster for economic injury is 9S4900 for Alabama and 9S5000 for Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 13, 2002.

Melanie R. Sabelhaus,

Acting Administrator.

[FR Doc. 02–29271 Filed 11–18–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4207]

Discretionary Grant Programs Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 2003 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training to serve as intermediaries administering national competitive programs concerning the countries of Central and East Europe and Eurasia. The grants will be awarded through an open, national competition among applicant organizations.

Authority for this Program for Research and Training on Eastern Europe and the Independent States of the Former Soviet Union is contained in the Soviet-Eastern European Research and Training Act of 1983 (22 U.S.C. 4501–4508, as amended).

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 2003 under a program administered by the Department of State. The program seeks to build and sustain expertise among Americans willing to make a career commitment to the study of Central and East Europe and Eurasia.

Organization of Notice: This notice contains three parts. Part I lists the closing date covered by of this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

Applications for an award must be sent by Express Mail, commercial courier (*e.g.* FEDEX, UPS, or DHL), or hand-delivered by February 14, 2003.

Applications must be addressed to Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 2251, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520–6510.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If any application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand delivered must be taken to Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 2251, 2201 C Street, NW., Washington, DC. Please use the entrance on 21st St., just north of the intersection with C St., and phone at (202) 736–4572 for pick up at the entrance.

The Advisory Committee staff will accept hand-delivered applications between 9 a.m. and 4 p.m. e.s.t. daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983, the Congress declared that independently verified factual knowledge about the countries of that area is ''of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs.'' Congress also declared that the development and maintenance of such knowledge and expertise ''depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government.'' The program provides financial support for advanced research, training and other related functions on the countries of the region. By strengthening and sustaining in the United States a cadre of experts on Central and East Europe and the NIS, the program contributes to the overall objectives of the FREEDOM Support and SEED Acts.

The full purpose of the Act and the eligibility requirements are set forth in Pub. L. 98–164, 97 Stat. 1047–50, as amended. The countries include Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Romania, Russia, Serbia (including Kosovo and Montenegro), Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary or Deputy Secretary of State, after consultation with the Advisory Committee, approves policies and makes the final determination on awards.

Applications for funding under the Act are invited from U.S. organizations prepared to conduct competitive programs on Central and East Europe and Eurasia and related fields. Applying organizations or institutions should have the capability to conduct competitive award programs that are national in scope. Programs of this nature are those that make awards based upon an open, nationwide competition, incorporating peer group review mechanisms. Individual end-users of these funds—those to whom the applicant organizations or institutions propose to make awards—must be at the graduate or post-doctoral level, and must have demonstrated a likely career commitment to the study of Central and East Europe and/or Eurasia.

Applications sought in this competition among organizations or institutions are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the countries of Central and East Europe and/or Eurasia by proposing:

(1) *National programs* that award contracts or grants to American institutions of higher education or not-for-profit corporations in support of post-doctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) *National programs* that offer graduate, post-doctoral and teaching fellowships for advanced training on the countries of Central and East Europe and Eurasia, and in related studies, including training in the languages of the region, with such training to be conducted on a shared-cost basis, at American institutions of higher education;

(3) *National programs* that provide fellowships and other support for American specialists enabling them to conduct advanced research on the countries of Central and East Europe and Eurasia, and in related studies; and those which facilitate research collaboration between Government and private specialists in these areas;

(4) *National programs* that provide advanced training and research on a reciprocal basis in the countries of Central and East Europe and Eurasia by facilitating access for American specialists to research facilities and resources in those countries;

(5) *National programs* that facilitate the public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the countries of Central and East Europe and Eurasia in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Support for specific activities will be guided by the following policies and priorities:

• *Support for Transitions.* The Advisory Committee strongly encourages support for research activities which, while building expertise among U.S. specialists on the region, also: (1) Promote fundamental goals of U.S. assistance programs such as helping establish market economies and promoting democratic governance and civil societies, and (2) provide knowledge to both U.S. and foreign audiences related to current U.S. policy interests in the region, broadly defined. This includes, but is not limited to, such topics as resolution of ethnic, religious, and other conflict; terrorism; security and defense reform; transition economics; media studies; women's issues and trafficking in persons; human rights; and citizen participation in politics and civil society. For on-site research, applicants are encouraged to think creatively about how individuals' work may complement democratization and marketization assistance activities in the region. Examples might include lecturing at a university or participating in workshops with host government and parliamentary officials, nongovernmental organizations, and other assistance target audiences on issues related to market and democratic transitions.

The Advisory Committee gives priority to programs on Central Asia, the Caucasus, Ukraine and the Balkans, especially the former Yugoslavia, where gaps in knowledge exist. The Advisory Committee encourages research on Russia that focuses on regions and areas outside capital cities. Historical or cultural research that promotes understanding of current events in the region is acceptable if an explicit connection can be made to contemporary political and/or economic transitions. Research on such topics as musicology or mathematics generally is not appropriate for funding.

• *Promoting Federal Service for Title VIII Grant Recipients.* Although the title VIII program does not have a federal service commitment for individuals receiving funding, the Advisory Committee would like grantees to explore ways to encourage end-users, where appropriate, to pursue U.S. Government career opportunities, internships, or short-term sabbaticals after completing their awards.

In this competition, the Advisory Committee welcomes proposals that promote opportunities for individuals in disciplines with Eurasian and/or East European studies concentrations to serve on a temporary basis as policy or other experts in U.S. Embassies and/or with Non-Governmental Organizations (NGOs) in the region.

Publications. Funds awarded in this competition should not be used to subsidize journals, newsletters and other periodical publications except in special circumstances, in which cases the funds should be supplied through peer-review organizations with national competitive programs.

• *Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, requests for conference funding should be directed to one or more of the national peer-review organizations receiving program funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

• *Library Activities.* Funds may be used for certain library activities that clearly strengthen research and training on the countries of Central and East Europe and Eurasia and benefit the fields as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Funds may not be used for activities such as modernization, acquisition, or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered.

• *Language Support.* The Advisory Committee encourages attention to the non-Russian languages of Eurasia and the less commonly taught languages of Central and East Europe. Support provided for Russian language instruction/study normally will be only for advanced level. Applicants proposing to offer language instruction are encouraged to apply to a national program as described above that has appropriate peer group review mechanisms.

• *Support for Non-Americans.* The purpose of the program is to build and sustain U.S. expertise on the countries of Central and East Europe and Eurasia. Therefore, the Advisory Committee has determined that highest priority for support always should go to American specialists (*i.e.*, U.S. citizens or permanent residents). Support for such activities as long-term research fellowships, *i.e.*, nine months or longer, should be restricted solely to American scholars. Support for short-term activities also should be restricted to Americans, except in special instances where the participation of a non-American scholar has clear and demonstrable benefits to the American scholarly community. In such special instances, the applicant must justify the expenditure. Despite this restriction on support for non-Americans, collaborative projects are encouraged—where the non-American component is funded from other sources—and priority is given to institutions whose programs contain such an international component.

• *Balanced National Program.* In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability on the countries of Central and East Europe and Eurasia. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort that will ensure attention to all the countries of the area.

• *Cost-sharing.* Legislation requires and this announcement indicates under Program Information of this section that in certain cases grantee organizations must include shared-cost provisions in their arrangements with end-users. Cost sharing is strongly encouraged, whenever feasible, in all programs.

Part III

Available Funds

Awards are contingent upon the availability of funds. Funding may be available at a level up to $5.0 million. The precise level of funding will not be known until legislative action is complete. In Fiscal Year 2002, the Congress appropriated to the program $5.0 million from the FREEDOM Support and Support for East European Democracies (SEED) Acts, which funded grants to 8 national organizations, with $3.4 million for activities on Eurasia and $1.6 million for those on Central and East Europe, including the Baltic states. The number of awards varies each year, depending on the level of funding and the quality of the applications submitted.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Grant agreements may permit the expenditure from a particular year's grant to be made up to three years after the grant's effective beginning date.

Applications

Applications must be prepared and submitted in 20 copies in Times New Roman font, 12 pitch in the following format: One-page, single-spaced Executive Summary; budget presentation with footnotes detailing line items; narrative description of proposed programs not to exceed 20 double-spaced pages; one-page, single-spaced *vitae* of key professional staff; and required certifications. Applicants may append other information they consider essential, although bulky submissions are discouraged and run the risk of not being reviewed fully.

Budget

Because funds will be appropriated separately for Central and East Europe (including the Baltic states) and Eurasia programs, proposals must indicate how the requested funds will be distributed by region, country (to the extent possible), and activity. Subsequently, grant recipients must report expenditures by region, country, and activity.

Applicants should familiarize themselves with Department of State grant regulations contained in 22 CFR part 145, ''Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations''; 22 CFR part 137, ''Department of State Government-wide Debarment and Suspension (Non-Procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)''; OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations''; and OMB Circular A–133, ''Audits of Institutions of Higher Learning and Other Non-Profit Institutions''; and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A–21, ''Cost Principles for Educational Institutions,'' or OMB Circular No. A–122, ''Cost Principles for Nonprofit Organizations''; (2) A detailed program budget indicating direct expenses with clearly identified administrative costs by program element and by region (Eurasia or Central and East Europe), indirect costs, and the total amount requested. The budget should indicate clearly the total amount requested as the sum of the amount requested for Eurasia activities plus the amount requested for Central and East Europe activities. The budget also should reflect administrative costs as a percentage of the total requested funding. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants requesting funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it, showing how specific lines in the budget would be affected by the allocation of requested grant funds. Other funding sources and amounts, when known, should be identified.

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) The organization's most recent audit report (the most recent U.S. Government audit report, if available) and the name, address, and point of contact of the audit agency. N.B.: The threshold for grants that trigger an audit requirement has been raised from $25,000 to $300,000.

(5) An indication of the applicant's priorities if funding is being requested for more than one program or activity.

All payments will be made to grant recipients through the U.S. Government-run Payment Management System (PMS).

Narrative Statement

The Applicant must describe fully the proposed programs, including detailed information about plans for advertising and recruiting for programs, peer review and selection procedures and identification of anticipated selection committee participants, estimates of the types and amounts of anticipated awards, and benefits of these programs for the Central and East European and Eurasian fields.

Applicants who have received previous grants from this State Department program should provide detailed information on the end-user awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. Applicants should specify both past and anticipated applicant to award ratios. A summary of an organization's past grants under this State Department program also should be included.

Proposals from national organizations involving language instruction programs should provide, for those programs supported in the past year, information on the criteria for evaluation, including levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre- and post-testing), indications of progress achieved by title VIII-funded students, instructors' qualifications, and budget information showing estimated costs per student.

Certifications

Applicants must include a description of affirmative action policies and practices and certifications of compliance with the provisions of: (1) The Drug-Free Workplace Act (Pub. L. 100–690), in accordance with appendix C of 22 CFR part 137, subpart F; and (2) section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), in accordance with appendix A of 22 CFR part 138, New Restrictions on Lobbying Activities.

Technical Review

The Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union will evaluate applications on the basis of the following criteria:

(1) Responsiveness to the substantive provisions set forth above in Program part II, Information (45 points);

(2) The professional qualifications of the applicant's key personnel and selection committees, and their experience conducting national competitive award programs of the type the applicant proposes on the countries of Central and East Europe and/or the Eurasia (35 points); and

(3) Budget presentation and cost effectiveness (20 points).

Further Information

For further information, contact Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 2251, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520–6510. Telephone: (202) 736–4572 or 736–4386, fax: (202) 736–4851 or (202) 736–4557.

Dated: November 13, 2002.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

[FR Doc. 02–29350 Filed 11–18–02; 8:45 am]

BILLING CODE 4710–32–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1542).

TIME AND DATE: 9 a.m. (CST), November 20, 2002, Mississippi State University, Hunter Henry Center, Barr Ave., Mississippi State, Mississippi.

STATUS: Open.

Agenda

Approval of minutes of meeting held on September 10, 2002.

New Business

Budget and Financing

A1. Retention of Net Power Proceeds and Nonpower Proceeds and Payments to the U.S. Treasury.

A2. Approval of tax-equivalent payments for Fiscal Year 2002 and estimated payments in Fiscal Year 2003.

B—Purchase Awards

B1. Contract with Computer Associates International, Inc., for software and maintenance of proprietary software.

C—Energy

C1. Contract with ABB, Inc., for extra-high voltage transformers.

C2. Contract with Motion Industries, Inc., for bearings and power transmission equipment.

C3. Contract with ADVATECH LLC to design, manufacture, deliver, and install gas desulfurization process equipment.

C4. Contract with Ingram Barge Company for barging services to Cumberland Fossil Plant.

C5. Contract with Canal Barge Company, Inc., for barging services to Colblert Fossil Plant.

C6. Contracts with Law Engineering and Environmental Services, Inc., and S&ME, Inc., for geotechnical and environmental services at various TVA locations.

E—Real Property Transactions

E1. Grant of a permanent easement to the Town of Dandridge, Tennessee, for a water and sewer line expansion affecting approximately 3.5 acres of land on Douglas Reservoir in Jefferson County, Tennessee, Tract No. XTDR–35U.

E2. Modification of certain deed restrictions affecting approximately 0.4 acre of former TVA land on Norris Reservoir in Union County, Tennessee, Tract No. XNR–232, S.2X.

E3. Grant of a permanent easement to Darlene Hester for a road access affecting approximately 0.3 acre of land on Little Bear Creek Reservoir in Franklin County, Alabama, Tract No. XTBCLR–3H.

E4. Grant of noncommercial, nonexclusive permanent easement to Riverbrook Shoreline Owners Association for construction and maintenance of recreational water-use facilities affecting approximately 4.7 acres of land on Fort Loudoun Reservoir in Blount County, Tennessee, Tract No. XTFL–132RE.

E5. Sale of a 30-year term commercial recreation easement to Corliss Smith (operator of Southlake RV Park) affecting approximately 11.2 acres of land on Fort Loudoun Reservoir in Knox County, Tennessee, Tract No. XFL–131RE.

F—Other

F1. Approval to file condemnation cases to acquire transmission line easements and rights-of-way affecting Tract Nos. EPH–54, –55, –55A, –56, –56B and –58, East Point-Hanceville Transmission Line, Cullman County, Alabama, and right to enter affecting Tract No. 2WCJR–1000TE, Waynesville-Clifton City Transmission Line, Wayne County, Tennessee.

Information Items

1. Approval of an amendment to the Trust Agreement between the TVA Retirement System Board of Directors and Fidelity Management Trust Company to eliminate the annual participant recordkeeping fee.

2. Approval of amendments to the Rules and Regulations of the TVA Retirement System and to the Provisions of the TVA Savings and Deferral Retirement Plan to provide System credit for certain lump-sum payments made to TVA employees in lieu of base wage or salary increases for FY 2003, and to provide System compliance with qualified domestic relations orders.

3. Approval of the TVA contribution rate to the TVA Retirement System for Fiscal Year 2003.

4. Approval of the filing of condemnation cases to acquire tree removal rights affecting Tract Nos. EPH–61, 61A–CR, and easements and rights-of-way affecting Tract Nos. EPH–15, –48, –66, and –71, East Point-Hanceville Transmission Line, Cullman County, Alabama, and Tract Nos. SBFP–36, –38, –40A, –45 (86/189 interest, –55 (403/1176 interest), –63, –75, (¾ interest), –76, –77C (107/108 interest), –85, and –86A (47/56 interest), Sebastopol Switching Station-Five Points, Scott County, Mississippi.

5. Approval of the filing of condemnation cases to acquire

easements and rights of way affecting Tract Nos. CRF–3A, –3AA, and –4, Chickamauga\Ridgedale-Oglethorp Loop Into Hawthorn Substation Transmission Line, Hamilton County, Tennessee; Tract No. SBFP–6, Sebastopol Switching Station-Five Point Transmission Line, Scott County, Mississippi; and right to enter affecting Tract Nos. MECGM–1000TE, –1001TE, and –1002TE, Morgan Energy Center-General Motors Transmission Line, Limestone County, Alabama.

6. Approval of the appointment of Bill Forsyth of Murphy, North Carolina, to be a member of the Regional Resource Stewardship Council.

7. Approval of the sale of permanent and temporary construction easements for a water intake and discharge for water treatment facilities for Southeast Tissue Company, LLC, affecting approximately 2.7 acres of land on Pickwick Reservoir in Colbert County, Alabama, Tract No. XPR–4641E.

8. Approval of a public auction sale of the former Singleton Laboratory site consisting of approximately 3.4 acres of Fort Loudoun Reservoir land in Blount County, Tennessee, Tract No. XFL–133.

9. Approval of negotiated pay adjustments for Fiscal Years 2003, 2004, and 2005, covering TVA Police employees represented by the Law Enforcement Employees Association.

10. Approval of negotiated pay adjustments for Fiscal Year 2003 for custodial employees represented by Local 544, Service Employees' International Union, AFL–CIO.

11. Approval of negotiated adjustments to the pay plan for engineer, scientist, and technician employees represented by the Engineering Association, Inc., for Fiscal Years 2003, 2004, and 2005.

12. Approval of a new classification and Market Pricing pay plan and pay adjustments for employees represented by the Office and Professional Employees International Union for Fiscal Year 2003.

13. Approval of a contract with Bechtel Power Corporation for engineering services for the Browns Ferry Nuclear Plant Unit 1 recovery effort.

14. Approval of a delegation of authority for the Executive Vice President, Transmission/Power Supply Group, to execute the Public Power Regional Transmission Grid Coordination Agreement.

15. Approval of revised Dispersed Power Production Guidelines for TVA and distributors of TVA power.

16. Approval of an extension of temporary authority to waive the Enhanced Growth Credit Program requirement that a facility must first be shut down for at least 12 months before becoming eligible for the program.

17. Approval of a revision of the formula used to calculate credits under the Low Density Credit Program.

18. Approval of a delegation of authority to the President and Chief Operating Officer, or a designee, to approve a Power Purchase Agreement for green power to be supplied from a wind-powered generation expansion project on Buffalo Mountain in support of TVA's Green Power Switch Program.

19. Approval for the Senior Vice President of Procurement, or a designee, to enter into individual contracts and incremental changes of up to $30 million each for Browns Ferry Nuclear Plant Unit 1 materials and services through Fiscal Year 2007, with the total dollar amount of contacts entered into in any fiscal year not to exceed &250 million.

20. Approval of a grant of a 30-year term public recreation easement, with conditional option for renewals, to the City of Florence, Alabama, affecting approximately 27 acres of land on Pickwick Reservoir in Lauderdale County, Alabama, Tract N. XTWDNC–1RE.

FOR FURTHER INFORMATION CONTACT: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: November 13, 2002.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 02–29523 Filed 11–15–02; 3:33 pm]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procedures for Further Consideration of Requests (Anniversary) for Exclusion of Particular Products From Actions With Regard to Certain Steel Products Under Section 203 of the Trade Act of 1974, as Established in Presidential Proclamation 7529 of March 5, 2002

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In a notice published on October 26, 2001 (66 FR 54321) (Notice), the Trade Policy Staff Committee (TPSC) established procedures for interested persons to request the exclusion of particular products from any action the President might take under section 203 of the Trade Act of 1974, as amended, (19 U.S.C. 2253) (Trade Act) with regard to certain steel products. Presidential Proclamation 7529 of March 5, 2002, established such actions with regard to certain steel products (safeguard measures), but excluded some of the particular products identified in requests for exclusion made in response to the Notice. See 67 FR 10553 (March 7, 2002). Proclamation 7529 authorized the United States Trade Representative (USTR) in March of each year in which any of the safeguard measure remains in effect to further exclude particular products from the pertinent safeguard measure established by the proclamation. The USTR is modifying procedures established on April 18, 2002 (67 FR 19307) for further consideration of such exclusion requests.

DATES: The USTR and the Department of Commerce will hold a public information session to review the anniversary exclusion filing procedures on Thursday, November 21, 2002, at 4 p.m. in room 3407 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. Information will available on the USTR website at *www.ustr.gov/sectors/industry/steel.shtml* indicating how interested persons may participate in this public information session by teleconference. Persons submitting requests for the exclusion of certain steel products from the safeguard measures must file completed questionnaires by December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Please send inquiries regarding the exclusion process by e-mail simultaneously to: *exclusion_support@ita.doc.gov* and *FR001@ustr.gov*. You may also contact the 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.

Within 120 days after the date of that proclamation, the USTR was authorized to further consider any request for exclusion from the section 201 measures 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 provisions created by the annex to the proclamation to exclude such particular product from the pertinent safeguard measure established by the proclamation.

Proclamation 7529 also delegated to the USTR the authority, in March of each year in which any safeguard measure established by this proclamation remains in effect, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provisions created by the annex to this proclamation to exclude such particular product from the pertinent safeguard measure established by this proclamation. This **Federal Register** notice provides notice of the procedures for the consideration of these anniversary exclusion requests.

To facilitate the consideration of new exclusion requests, USTR requests persons interested in obtaining an exclusion from the safeguard measures of a particular product to send an e-mail to *exclusion_support@ita.doc.gov* to request an identifying ''A'' number. The ''Subject'' line of the e-mail must give the name of the requesting party and the words ''A-number Request'' as in the following example: XYZSteelCo—A-number Request. Each submitting party will be assigned only one identifying A number, regardless of the number of total exclusion requests a submitting party may ultimately file. That party's individual product requests will then be differentiated using the ''decimal point'' numbers. Further instructions about decimal numbers will be provided to the submitting party in the e-mail which supplies the submitting party with its A-number.

USTR, in conjunction with the U.S. Department of Commerce, has developed a series of questions designed to elicit information that clearly identifies the product under consideration, and provides detailed information on the requester's situation. These questions, presented in the form of a requester questionnaire, are available on the USTR website at *http://www.ustr.gov/sectors/industry/steel.shtml*. The questionnaire contains detailed filing instructions. Interested parties must submit a complete questionnaire by December 3, 2002.

In addition to the instructions contained in the questionnaire, USTR has developed guidelines in response to frequently asked questions to assist a requester in preparing a response to the questionnaire. The Guidelines further elaborate upon the questionnaire and provide sample responses to selected questions within the questionnaire. The Guidelines will be available on the USTR website at *http://www.ustr.gov/sectors/industry/steel.shtml*.

USTR and the Commerce Department will review each exclusion request for the minimum level of sufficiency necessary to initiate each exclusion request. In the case of a deficient exclusion request, USTR or Commerce will transmit by e-mail a notice to the submitting party that briefly summarizes the nature of the deficiency and/or requests supplemental information. By providing a deficiency notice, USTR and the Commerce Department will otherwise make no comment on the merits of an exclusion request. Exclusion requesters will have 10 days from the date of transmission of the deficiency notice to remedy and file a correction or submit requested supplemental information to its exclusion request.

Short descriptions of the particular products covered by complete questionnaire responses will be posted in groups on the USTR website, and the requester questionnaires will be made available to the public in the Commerce Department Central Records Unit. The timing and size of the posting of such groups will be determined and announced at a future date by USTR and will depend on the volume and nature of exclusion requests received by USTR.

USTR, in conjunction with the Commerce Department, has developed a series of questions designed to substantiate any objections. These questions, presented in the form of an objector questionnaire, will be available on the USTR website at *http://www.ustr.gov/sectors/industry/steel.shtml*. The filing deadlines of such objector questionnaires will be determined and announced at a future date in accord with the above-referenced public posting process.

If a complete response to the requester questionnaire with regard to a particular product has not been received by December 3, 2002, USTR may disregard the exclusion request for that product. If a complete response to the objector questionnaire with regard to a particular product has not been received by the date that will be established by USTR, USTR will assume that the domestic industry does not object to the exclusion of that particular product.

USTR and the Commerce Department will make time available to meet with interested persons in the latter half of January 2003 to review the submissions related to exclusion requests. USTR will publish instructions on the USTR website in December for requesting meetings with the exclusion analysis team, and will notify the parties of the meeting schedule in the first half of January 2003. If the number of meetings requested exceeds the time available for such meetings, priority will be given to those meetings that discuss exclusion requests that, in the opinion of USTR and Commerce, require further inquiry.

Each exclusion request will be evaluated on a case-by-case basis. USTR will grant only those exclusions that do not undermine the objectives of the safeguard measures. In analyzing the requests, USTR will consider whether the product is currently being produced in the United States, whether substitution of the product is possible, whether qualification requirements affect the requester's ability to use domestic products, current inventory levels, whether the requested product is under development by a U.S. producer who will imminently be able to produce it in marketable quantities, and any other relevant factors.

Submission of Requests for Exclusion and Opposition to Requests for Exclusion

Parties who wish to place an exclusion request on the record will be required to submit paper copies of each questionnaire response to the Department of Commerce Central Records Unit (B099) via Room 1870. Four paper copies of a public version of an exclusion request must be filed. Parties who wish to file business proprietary versions must submit four paper copies of the business proprietary version and two paper copies of the public version. In addition to paper copies, interested parties must also file an electronic version via e-mail in a WordPerfect or Microsoft Word format to *exclusion_support@ita.doc.gov* and *FR001@ustr.gov*. Detailed filing instructions are contained in both the requester and objector questionnaires

located in the aforementioned USTR website address.

Any long description of the product subject to an exclusion request must include only publicly available information, in text form (no tables or graphs), with all units of measurement converted to metric equivalents. The description must be sufficient to differentiate the product from other products, and to allow for enforcement of the exclusion, if granted, by the U.S. Customs Service.

We strongly discourage the submission of business proprietary information. Any questionnaire response that contains business proprietary information must be accompanied by two paper copies of a public summary that do not contain business proprietary information and four paper copies that do contain business proprietary information.

Paperwork Reduction Act

This notice contains a collection of information provision subject to the Paperwork Reduction Act (PRA) that the Office of Management and Budget (OMB) has approved. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish voluntarily to request the exclusion of a product from the safeguard measures. It is expected that the collection of information burden will be no more than 20 hours. This collection of information contains no annual reporting or record keeping burden. OMB approved this collection of information under OMB control number 0350–0011. Please send comments regarding the collection of information burden or any other aspect of the information collection to USTR at the address above.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 02–29292 Filed 11–18–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review Under 49 U.S.C. 41720 of Delta/Northwest/Continental Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Extension of waiting period.

SUMMARY: Delta Air Lines, Northwest Airlines, and Continental Airlines have submitted code-sharing and frequent-flyer program reciprocity agreements to the Department for review under 49 U.S.C. 41720. That statute requires such agreements between major U.S. passenger airlines to be submitted to the Department at least thirty days before the agreements' proposed effective date and authorizes the Department to extend the waiting period for these agreements at the end of the thirty-day period. The Department has determined to extend the waiting period for the Delta/Northwest/Continental code-share agreements for an additional thirty days, from November 21 to December 21, 2002.

Any supplemental comments must be submitted by December 4, 2002.

ADDRESSES: Comments must be filed with Randall Bennett, Director, Office of Aviation Analysis, Room 6401, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file three copies of its comments.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: Delta, Northwest, and Continental submitted code-sharing and frequent-flyer program reciprocity agreements to us for review under 49 U.S.C. 41720 on August 23. That statute requires such agreements between major U.S. airlines to be submitted to us more than thirty days before their planned implementation, and it authorizes us to extend the waiting period by up to 150 days for code-sharing agreements and by up to sixty days for other types of agreements. We have already extended the waiting period for these agreements twice by thirty days. 67 FR 59328 (September 20, 2002); 67 FR 64960 (October 22, 2002). We have determined to extend the waiting period for the code-share agreement for an additional thirty days to give us time to consider the supplemental comments being submitted by other parties interested in the agreement. While we cannot extend the waiting period for the frequent flyer reciprocity agreement again, we are continuing to examine the competitive issues raised by the frequent flyer reciprocity agreement, and we request that parties address those issues in their comments as well.

We have been informally reviewing the agreements submitted by Delta, Continental, and Northwest and discussing the competitive issues with the Justice Department. Our review of the agreements is focusing on whether they may reduce competition. To bar the parties from implementing the agreements, we would need to determine that they were unlawful under 49 U.S.C. 41712 as an unfair method of competition, that is, that the agreements violate the antitrust laws or antitrust principles. *See United Air Lines* v. *CAB,* 766 F.2d 1101 (7th Cir. 1985). Our review is analogous to the review of major mergers and acquisitions conducted by the Justice Department and the Federal Trade Commission under the Hart-Scott-Rodino Act, 15 U.S.C. 18a, since we are considering whether we should institute a formal proceeding for determining whether an agreement would violate section 41712.

To assist us in our review, we have given interested parties the opportunity to submit comments on the agreements, initially on the basis of redacted copies of the agreements and more recently on the basis of unredacted copies, subject to restrictions designed to ensure that the confidential business information in the agreements does not become public. We made the unredacted copies of the agreements available to the parties on November 12 after giving Delta, Continental, and Northwest some advance notice of our decision to make the copies available. 67 FR 69297 (November 15, 2002).

Any supplemental comments must be submitted no later than December 4. That deadline will give the parties adequate time to submit any additional analysis based on their review of the unredacted material. We will then consider all of the comments and the information provided by Delta, Continental, and Northwest and further consult with the Justice Department. We hope to make a final decision by December 21 on whether more formal action should be taken on the agreements.

Issued in Washington, DC on November 15, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–29490 Filed 11–15–02; 2:06 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending November 8, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–13751.
Date Filed: November 5, 2002.
Parties: Members of the International Air Transport Association.
Subject: CAC/30/Meet/009/002 dated November 4, 2002, Cargo Agency Conference—Resolution 805zz, Intended effective date: October 1, 2002.

Docket Number: OST–2002–13771.
Date Filed: November 6, 2002.
Parties: Members of the International Air Transport Association.
Subject:
PTC EUR 0481 dated October 25, 2002,
TC2 Within Europe Expedited Resolutions 002ap, 074my r1–r2,
PTC2 EUR 0482 dated October 25, 2002,
TC2 Within Europe Expedited Resolutions r3–r8,
PTC2 EUR 0483 dated October 25, 2002,
TC2 Within Europe Expedited Resolutions 002ar, 004a r9–r10,

Intended effective date: December 1, 2002, December 15, 2002, January 1, 2003.

Andrea M. Jenkins,
Federal Register Liaison.
[FR Doc. 02–29227 Filed 11–18–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 8, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1998–3419.
Date Filed: November 5, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 26, 2002.
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. 41101, 14 CFR part 377 and subpart B, requesting renewal and amendment of its certificate for Route 752, authorizing American to engage in scheduled foreign air transportation of persons, property, and mail between Chicago/New York-Tokyo and Dallas/Ft. Worth-Osaka, and to substitute Los Angeles for Boston as a U.S. gateway to Tokyo.

Andrea M. Jenkins,
Federal Register Liaison.
[FR Doc. 02–29228 Filed 11–18–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Honoring Tickets of National Airlines Pursuant to the Requirements of Section 145 of the Aviation and Transportation Security Act

The Department issued a notice on August 8, 2002, providing guidance for airlines and the traveling public regarding the obligation of airlines under section 145 of the Aviation and Transportation Security Act (''Act'') to transport passengers of airlines that have ceased operations due to insolvency or bankruptcy. (Pub. L. 107–71, 115 Stat. 645 (November 19, 2001)) That notice, which was issued after Vanguard Airlines' July 2002 cessation of service, was intended to provide immediate guidance in response to numerous complaints from ticketed passengers and inquiries from airlines. On November 6, 2002, National Airlines ceased operations. The purpose of this notice is to remind carriers that the provisions of section 145 also apply to National Airlines' cessation of service.

As guidance to the industry, the Department's August 8 notice mentioned several factors that we would look to in determining whether airlines were complying with section 145.[1] Section 145 requires, in essence, that airlines operating on the same route as an insolvent carrier that has ceased operations shall transport the ticketed passengers of the insolvent carrier ''to the extent practicable.'' The Department stated, among other things, our preliminary view that, at a minimum, section 145 requires that passengers holding valid confirmed tickets, whether paper or electronic, on an insolvent or bankrupt carrier be transported by other carriers who operate on the route for which the passenger is ticketed on a space-available basis, without significant additional charges. We further pointed out that, under section 145, passengers whose transportation has been interrupted have 60 days after the date of the service interruption to make alternative arrangements with an airline for that transportation. We made clear in our guidance, however, that we did not believe that, in enacting section 145, Congress intended to prohibit carriers from recovering from accommodated passengers the amounts associated with the actual cost of providing such transportation. We wish to reiterate that advice with respect to the current situation involving National Airlines' cessation of service.

After the issuance of our August 8 notice, several carriers informally sought additional clarification, specifically regarding recovery of the costs of accommodating passengers under section 145. In our August 8 notice, we stated that we did not foresee that such costs would exceed $25.00.[2] We wish to make clear that the $25.00 amount stated above was simply an estimate of the magnitude of the additional direct costs carriers might incur in transporting affected passengers on a standby basis.

Several carriers have informally raised concerns that the $25.00 cost estimate was too low. In each such instance, Department staff has advised those carriers that, to the extent they experienced and could document reasonable direct costs in excess of the $25.00 estimated amount, they should be entitled to recover such costs under the statute. Department staff has specifically requested each airline that had expressed concern to provide evidence demonstrating that its reasonable direct costs exceeded the estimated $25.00 amount. No airline has provided any documentation in

[1] Failure by an airline to comply with section 145 may constitute an unfair and deceptive practice in violation of 49 U.S.C. 41712.

[2] We pointed out that examples of such costs include the cost of rewriting tickets, providing additional onboard meals, and the incremental fuel cost attributable to transporting an additional passenger.

response to that request.[3] We thus have no information demonstrating that the estimated amount of $25.00 would be inadequate to cover additional direct costs to transport persons holding Vanguard Airline tickets on a space available basis.

With respect to National Airlines, the Department has not received any written comments or other evidence from any airline demonstrating that $25.00 would be insufficient to cover additional direct costs to transport persons holding tickets on a space-available basis. However, we have received reports that in some instances airlines have charged far in excess of $25.00 for transportation. Because we wish to ensure that airlines have had the opportunity to demonstrate that costs in excess of $25.00 each way are reasonable, the Department has not yet taken any action with respect to any airline in connection with section 145 involving either Vanguard Airlines' or National Airlines' cessations of operations. To obtain further information on this issue from the traveling public and the airlines, we request that any airline or person who believes that the Department's estimate of $25.00 is either insufficient, or is more than necessary to cover the direct costs of accommodating ticketed passengers on a space available basis, contact the Department's Office of Aviation Enforcement and Proceedings, at the address below, within seven days of the date of this notice and provide written comments and evidence of costs in support of their position.

Questions regarding this notice may be addressed in writing to Dayton Lehman, Deputy Assistant General Counsel, Office of Aviation Enforcement and Proceedings, 400 7th St., SW., Washington, DC 20590, or he may be contacted by telephone at (202) 366–9342.

An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov/reports.*

Dated: November 14, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–29442 Filed 11–15–02; 11:31 am]

BILLING CODE 4910–62–P

[3] A few airlines also expressed separate concerns about difficulties in verifying confirmed reservations of passengers holding electronic tickets, in which case a hard-copy ticket would not be available. Department staff suggested it would be appropriate to require such passengers to provide proof of payment and confirmation, such as receipts and printed itineraries.

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–13767]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0606, 2115–0077, 2115–0096, 2115–0549, 2115–0603 and 2115–0640

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of six Information Collection Requests (ICRs). The ICRs comprise (1) National Response Resource Inventory; (2) Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent and Operations Manual; (3) Records on Oil and Hazardous Material Pollution Prevention and Safety: Equivalents, Alternatives, and Exemptions; (4) Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels; (5) Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old; and (6) Mandatory Ship Reporting System for the Northeast and Southeast Coasts of the United States. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before January 21, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket (USCG 2002–13767) more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, Room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. DOT, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document by docket number (USCG 2002–13767), and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* National Response Resource Inventory.

OMB Control Number: 2115–0606.

Summary: The information is needed to improve the effectiveness of deploying response equipment in the event of an oil spill. It may also be used in the development of contingency plans.

Need: Section 4202 of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) requires the Coast Guard to compile and maintain a comprehensive list of spill-removal equipment. This collection helps fulfill that requirement.

Respondents: Organizations that remove oil spills.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,224 hours a year.

2. *Title:* Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent and Operations Manual (OM).

OMB Control Number: 2115–0077.

Summary: A Letter of Intent is a notice to the Coast Guard Captain of the Port that an operator intends to operate a facility that will transfer bulk oil or hazardous materials to or from vessels. An OM establishes procedures to follow when conducting the transfer and in the event of a spill.

Need: 33 U.S.C. 1321 authorizes the Coast Guard to prescribe rules for preventing pollution. 33 CFR 154.110 prescribes the rules for a letter of intent, and 33 CFR 154 subpart B prescribes those for an OM.

Respondents: Operators of facilities that transfer oil or hazardous materials in bulk.

Frequency: On occasion.

Burden Estimate: The estimated burden is 27,819 hours a year.

3. *Title:* Records on Oil and Hazardous Material Pollution Prevention and Safety: Equivalents, Alternatives, and Exemptions.

OMB Control Number: 2115–0096.

Summary: This information is needed to minimize the number and impact of pollution discharges and accidents occurring during transfer of oil or hazardous materials. It also helps to evaluate proposed alternatives and requests for exemptions.

Need: The information collected under this rule is needed to: (1) Prevent or mitigate the results of an accidental release of liquid hazardous materials being transferred in bulk at waterfront facilities; (2) ensure that facilities and vessels that use vapor-control systems are in compliance with the safety standards developed by the Coast Guard; (3) provide requirements for equipment and operations by facilities and vessels that transfer oil or hazardous materials in bulk to or from vessels with a capacity of 250 or more barrels; and (4) provide procedures for operators of vessels or facilities who request exemption or partial exemption from the requirements of the rules for preventing pollution.

Respondents: Operators of facilities and vessels transferring oil and hazardous materials in bulk.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,440 hours a year.

4. *Title:* Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels.

OMB Control Number: 2115–0549.

Summary: The collection of information requires passenger vessels to have posted two placards that contain safety and operating instructions on the use of cooking appliances that employ liquefied gas or compressed natural gas.

Need: 46 U.S.C. 3306(a)(6) authorizes the Coast Guard to prescribe rules for the use of vessel stores of a dangerous nature. These rules cover both uninspected and inspected passenger vessels.

Respondents: Owners and operators of passenger vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 2,680 hours a year.

5. *Title:* Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old.

OMB Control Number: 2115–0603.

Summary: OPA 1990 requires the issuance of rules for the structural integrity of tank vessels, including periodic gauging of the plating thickness of tank vessels over 30 years old. This also helps to verify the structural integrity of older such vessels.

Need: 46 U.S.C. 3703 authorizes the Coast Guard to prescribe rules for tank vessels, including rules on design, construction, alteration, repair, and maintenance. 46 CFR 31.10–21a prescribes those for periodic gauging and engineering analyses of certain tank vessels over 30 years old.

Respondents: Owners and operators of certain tank vessels.

Frequency: Every 5 years.

Burden Estimate: The estimated burden is 13,688 hours a year.

6. *Title:* Mandatory Ship Reporting System for the Northeast and Southeast Coasts of the United States.

OMB Control Number: 2115–0640.

Summary: The information is needed to reduce the number of ship collisions with endangered northern right whales. The rules establish two mandatory ship-reporting systems off the northeast and southeast coasts of the United States.

Need: The collection involves ships' reporting by radio to a shore-based authority when entering the areas covered by the reporting system. The ships will, in return, receive information to reduce the likelihood of collisions between themselves and northern right whales—an endangered species—in the areas established with critical-habitat designation.

Respondents: Operators of certain vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 88 hours a year.

Dated: November 7, 2002.

C.I. Pearson,

Director of Information and Technology.

[FR Doc. 02–29324 Filed 11–18–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–13766]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0142, 2115–0089, 2115–0137, 2115–0143, and 2115–0541

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of five Information Collection Requests (ICRs). The ICRs comprise (1) Approval of Plans and Records for Marine Engineering Systems—46 CFR Subchapter F; (2) Ships Carrying Bulk Hazardous Liquids; (3) Report of Discharge of Oil or Hazardous Substance; (4) Records Relating to Citizenship of Personnel on Units Engaged in Activities on Outer Continental Shelf (OCS); and (5) Barges Carrying Bulk Hazardous Materials. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before January 21, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket (USCG 2002–13766) more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at

Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, Room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. DOT, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document by docket number (USCG 2002–13766), and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Approval of Plans and Records for Marine Engineering Systems—46 CFR Subchapter F.

OMB Control Number: 2115–0142.

Summary: This collection of information requires an owner or builder of a commercial vessel to submit to the U.S. Coast Guard, for review and approval, plans pertaining to marine-engineering systems to ensure that the vessel will meet regulatory standards.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to prescribe rules for safety of vessels, including those related to marine-engineering systems. 46 CFR subchapter F prescribes them. They provide the specifications, standards, and requirements for strength and adequacy of design, construction, installation, inspection, and choice of materials for machinery, boilers, pressure vessels, safety valves, and piping systems upon which safety of life depends.

Respondents: Owners and builders of commercial vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 3,090 hours a year.

2. *Title:* Ships Carrying Bulk Hazardous Liquids.

OMB Control Number: 2115–0089.

Summary: This information is needed to ensure the safe transport of bulk hazardous liquids on chemical tank vessels and to protect the environment from pollution.

Need: 46 U.S.C. 3703 authorizes the Coast Guard to prescribe rules for protection against hazards to life, property, and the marine environment. 46 CFR part 153 prescribes rules for the safe transport by vessel of bulk hazardous liquids.

Respondents: Owners and operators of chemical tank vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 738 hours a year.

3. *Title:* Report of Discharge of Oil or Hazardous Substance.

OMB Control Number: 2115–0137.

Summary: The collection of information requires any person in charge of a vessel or an onshore or offshore facility to report to the National Response Center, as soon as he or she knows of any discharge of oil or a hazardous substance.

Need: 33 CFR 153.203, 40 CFR 263.30 and 264.56, and 49 CFR 171.15 mandate that the Center be the central place for the public to report all polluting spills. The information collected goes to it.

Respondents: Persons in charge of vessels or onshore or offshore facilities.

Frequency: On occasion.

Burden Estimate: The estimated burden is 8,667 hours a year.

4. *Title:* Records Relating to Citizenship of Personnel on Units Engaged in Activities on OCS.

OMB Control Number: 2115–0143.

Summary: Vessels and units engaged in activities on the Outer Continental Shelf OCS (exploration and exploitation of offshore resources such as gas and oil) must be manned and crewed by U.S. citizens or permanent resident aliens (43 U.S.C. 1356). Employers must, by 33 CFR 141.35, maintain records demonstrating compliance.

Need: This information is needed to ensure compliance with the statutory mandates to man or crew OCS facilities with U.S. citizens or permanent resident aliens.

Respondents: Operators of vessels and units engaged in activities on the OCS.

Frequency: On occasion.

Burden Estimate: The estimated burden is 442 hours a year.

5. *Title:* Barges Carrying Bulk Hazardous Materials.

OMB Control Number: 2115–0541.

Summary: 46 U.S.C. 3703 authorizes the Coast Guard to prescribe rules related to the carriage of liquid bulk dangerous cargoes. 46 CFR part 151 prescribes rules for barges carrying bulk liquid hazardous materials.

Need: This information is needed to ensure the safe shipment of bulk hazardous liquids in barges. In particular, it is needed to ensure that barges meet safety standards and to ensure that barges' crewmembers have the information necessary to operate barges safely.

Respondents: Owners and operators of tank barges.

Frequency: On occasion.

Burden Estimate: The estimated burden is 10,903 hours a year.

Dated: November 7, 2002.

C.I. Pearson,

Director of Information and Technology.

[FR Doc. 02–29325 Filed 11–18–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Tenth Quarterly Meeting of the Crash Injury Research and Engineering Network (CIREN)

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

ACTION: Meeting Announcement.

SUMMARY: This notice announces the Tenth Quarterly Meeting of members of the Crash Injury Research and Engineering Network. CIREN is a collaborative effort to conduct research on crashes and injuries at ten Level 1 Trauma Centers linked by a computer network. Researchers can review data and share expertise, which could lead to a better understanding of crash injury mechanisms and the design of safer vehicles.

DATE AND TIME: The meeting is scheduled from 9 a.m. to 5 p.m. on Thursday, December 5, 2002.

ADDRESSES: The meeting will be held at the Department of Transportation Headquarters, (Nassif Building), 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The CIREN System has been established and crash cases have been entered into the database by each Center. CIREN cases may be viewed from the NHTSA/CIREN Web site at: *http://www-nrd.nhtsa.dot.gov/departments/nrd-50/ciren/CIREN.html.* NHTSA has held three Annual Conferences where CIREN research results were presented. Further information about the three previous

CIREN conferences is also available through the NHTSA Web site. NHTSA held the first quarterly meeting on May 5, 2000, with a topic of lower extremity injuries in motor vehicle crashes; the second quarterly meeting on July 21, 2000, with a topic of side impact crashes; the third quarterly meeting on November 30, 2000, with a topic of thoracic injuries in crashes; the fourth quarterly meeting on March 16, 2001, with a topic of offset frontal collisions; the fifth quarterly meeting on June 21, 2001, on CIREN outreach efforts; the sixth quarterly meeting (held in Ann Arbor, Michigan) with a topic of injuries involving sport utility vehicles, the seventh quarterly meeting on December 6, 2001, with a topic of Age Related Injuries (Elderly and Children), the eighth quarterly meeting on April 25, 2002, with a topic of Head and Traumatic Brain Injuries, and the ninth quarterly meeting on August 22, 2002 at Harborview Injury Prevention and Research Center in Seattle, Washington with presentations highlighting the various research specialities of the Centers. Presentations from these meetings are available through the NHTSA website.

NHTSA plans to continue holding quarterly meetings on a regular basis to disseminate CIREN information to interested parties. This is the tenth such meeting. The ten CIREN Centers will be presenting papers on the research specialty for their particular center regarding crash injury mechanisms. The next meeting is tentatively scheduled for April 3, 2003.

Should it be necessary to cancel the meeting due to inclement weather or to any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on NHTSA's Web site *http://www.nhtsa.dot.gov/nhtsa/announce/meetings/*. If you do not have access to the Web site, you may call the contact listed below and leave your telephone or fax number. You will be called only if the meeting is postponed or canceled.

FOR FURTHER INFORMATION CONTACT: Catherine McCullough, Office of Advanced Safety Research, 400 Seventh Street, SW, Room 6220, Washington, DC 20590, telephone: (202) 366–4734.

Issued on: November 8, 2002.

Raymond P. Owings,

Associate Administrator for Advanced Research and Analysis, National Highway Traffic Safety Administration.

[FR Doc. 02–29229 Filed 11–18–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–10175; Notice 2]

Decision That Nonconforming 2001 Mercedes Benz Gelaendewagen 5-Door Long Wheel Base Multipurpose Passenger Vehicles Are Eligible for Importation

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

ACTION: Notice of decision by NHTSA that nonconforming 2001 Mercedes Benz Gelaendewagen 5-door long wheel base multipurpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 2001 Mercedes Benz Gelaendewagen 5-door long wheel base MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

DATES: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (''FMVSS'') shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC, of Baltimore, MD, (''J.K.'') (Registered Importer 90–006) petitioned NHTSA to decide whether 2001 Mercedes Benz Gelaendewagen MPVs are eligible for importation into the United States. NHTSA published notice of the petition on August 1, 2001 (66 FR 39823) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from the Original Automobile Manufacturers' Association of Concord, New Hampshire. This comment was signed by a James Linder, who identified himself as President of the organization. The comment questioned the adequacy of the documentation submitted by J.K. to demonstrate that the 2001 Mercedes Benz Gelaendewagen MPV complies with, or is capable of being altered to comply with, a number of FMVSSs. The comment recommended that the NHTSA engineer responsible for each of the standards cited (Standard Nos. 103, 104, 105, 108, 113, 114, 118, 124, 201, 202, 204, 206, 207, 208, 209, 210, 212, 214, 216, 219, 301, and 302, as well as the Federal Bumper Standard found in 49 CFR Part 581) review the data submitted by J.K. to determine whether it is sufficient to certify the compliance of the 2001 Mercedes Benz Gelaendewagen MPV with the standard. After receiving this comment, NHTSA learned that the names of both the organization that purportedly submitted it, and the individual who signed it, are fictitious. In light of this circumstance, as well as the fact that the comment essentially offers little more than suggestions to guide the agency in its review of the petition, we have concluded that it does not merit further discussion in this document. We do note, however, that in processing import eligibility petitions, the agency does obtain, when necessary, input of the kind the comment

recommended from its professional engineering staff.

After initially reviewing the petition, the agency informed J.K., by letter dated December 7, 2001, that it had submitted insufficient test data to demonstrate that the 2001 Mercedes Benz Gelaendewagen MPV complies with, or is capable of being altered to comply with, Standard Nos. 105 Hydraulic Brake Systems, 208 Occupant Crash Protection, 214 Side Impact Protection, and 301 Fuel System Integrity. The letter asked J.K. how it intended to bring the vehicle into compliance with these standards.

In lieu of responding to this request, J.K. asked the agency, by letter dated January 24, 2002, to disregard and destroy the data submitted in support of its original petition, and to process the petition instead under 49 U.S.C. 30141(a)(1)(A), on the basis that there is a U.S.-certified version of the vehicle. J.K. identified that vehicle as the 2002 Gelaendewagen Type 463 MPV (identified in the letter as the ''G500 model'') that Mercedes-Benz had begun to import into the United States. The letter asserted that this was an appropriate comparative vehicle because the vehicle that was the subject of the petition was actually produced after some of the vehicles that Mercedes had been importing with a 2002 model year designation.

The agency next received an inquiry concerning the status of the petition from an individual who identified himself as a client of J.K.'s. The individual stated that he had contracted with J.K. for the importation of a 3-door short wheel base convertible version of the 2001 Mercedes Benz Gelaendewagen. The agency subsequently learned from Mercedes Benz North America that the only model year 2002 Gelaendewagen being offered for sale in the United States is the 5-door long wheel base version of the vehicle. Based on this information, the agency asked J.K. to clarify which versions of the vehicle were covered by its petition, and to modify the petition if J.K. intended it to cover both long wheel base and short wheel base versions. J.K. responded, by letter dated April 15, 2002, that it intended the petition to cover all versions of the 2001 Mercedes Benz Gelaendewagen.

The agency then informed J.K., by letter dated May 15, 2002, that due to the 18-inch wheelbase difference and weight difference between the short wheel base and long wheel base versions of the vehicle, as well as the body difference with regard to the convertible model, the compliance of the 5-door long wheel base version with Standard Nos. 201, 204, 208, 210, 214, 216, and 301 does not necessarily demonstrate compliance of the 3-door short wheel base and convertible versions with those standards. The agency accordingly asked J.K. to supply it with additional information substantiating that the 3-door short wheel base and convertible models of the vehicle comply with those standards if J.K. wished the agency to construe the petition as applying to all three models. J.K. responded by letter dated August 12, 2002, requesting the agency to process the petition as applicable to the 5-door long wheel base version of the 2001 Gelaendewagen alone. J.K. stated that it would later submit separate petitions covering the other versions of the vehicle.

Since there was no substantially similar U.S.-certified version of the 2001 Mercedes Benz Gelaendewagen, 49 U.S.C. 30141(a)(1)(B) provides the only basis for the agency to decide that the vehicle is eligible for importation. As previously noted, that section permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test or such other evidence as NHTSA decides to be adequate. In this instance, the fact that there is a U.S.-certified counterpart for the 5-door long wheel base version of the 2002 model Mercedes Benz Gelaendewagen has led the agency to conclude that the non-U.S. certified 5-door long wheel base model built in 2001 has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS. In light of this circumstance, the agency has decided to grant import eligibility to that model.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP–21 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 2001 Mercedes Benz Gelaendewagen 5-door long wheel base multipurpose passenger vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 13, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–29230 Filed 11–18–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34275]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company; Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

Pursuant to a written trackage rights and joint ownership agreement dated April 5, 2002, The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant limited overhead trackage rights to Union Pacific Railroad Company (UP) between BNSF milepost 3.3x near Argo, WA, and BNSF milepost 9.5x near Black River, WA, a distance of 6.2 miles, and UP has agreed to grant limited overhead trackage rights to BNSF between UP milepost 176.4 near Rhodes, WA, and UP milepost 173.1 near Black River, WA, a distance of 3.3 miles.[1]

The parties state that consummation of the transaction was scheduled to occur immediately upon the November 6, 2002 effective date of the exemption (7 days after the exemption was filed) and that operations under the exemption were scheduled to begin on or after November 7, 2002.

The purpose of the trackage rights is to allow the phase-in of commuter rail enhancements to accommodate the Central Puget Sound Regional Transit Authority's commuter operations between Seattle and Tacoma, WA.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in

[1] The notice refers to an exchange of ''temporary'' overhead trackage rights in connection with a ''joint relocation project.'' The transaction appears to be an exchange of trackage rights for a term of 40 years and has been processed as such. In the future, if circumstances warrant, BNSF and UP may need to seek approval to discontinue the trackage rights.

Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the exemption.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34275, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sarah W. Bailiff, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039, and Robert T. Opal, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: November 12, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–29194 Filed 11–18–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 8, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

DATES: Written comments should be received on or before December 19, 2002, to be assured of consideration.

Bureau of Engraving and Printing (BEP)

OMB Number: 1520–0002.

Form Number: BEP 5287.

Type of Review: Extension.

Title: Claim for Amounts Due in the Case of Deceased Owner of Mutilated Currency.

Description: BEP Form 5287 is used when Treasury is required to determine ownership in cases of a deceased owner of damaged or mutilated currency.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 180.

Estimated Burden Hours Per Response: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 165 hours.

Clearance Officer: Pamela Grayson, Bureau of Engraving and Printing, Room 3.2.C, Engraving and Printing Annex, 14th and C Streets, SW., Washington, DC 20228, (202) 874–2212.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–29233 Filed 11–18–02; 8:45 am]

BILLING CODE 4840–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 8, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 19, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1414.

Form Number: IRS form 8846.

Type of Review: Extension.

Title: Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.

Description: Employers in food or beverage establishments where tipping is customary can claim an income tax credit for the amount of social security and Medicare taxes paid (employer's share) on tips, other than tips used to meet the minimum wage requirement.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 68,684.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—8 hr., 7 min.

Learning about the law or the form—18 min.

Preparing and sending the form to the IRS—26 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 609,228 hours.

OMB Number: 1545–1417.

Form Number: IRS form 8845.

Type of Review: Extension.

Title: Indian Employment Credit.

Description: Employers can claim a credit for hiring American Indians or their spouses to work within an Indian reservation. The credit is figured by multiplying by 20% the increase in wages and health insurance costs over the comparable amount paid or incurred during calendar year 1993.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,246.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 hr., 53 min.

Learning about the law or the form—1 hr., 40 min.

Preparing and sending the form to the IRS—1 hr., 53 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 14,292 hours.

OMB Number: 1545–1500.

Form Number: IRS form 8850.

Type of Review: Extension.

Title: Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.

Description: A job applicant completes and signs, under penalties of perjury, the top portion of the form to indicate that he or she is a member of a targeted group. If the employer has a belief that the applicant is a member of a targeted group, the employer signs the other portion of the form under penalties of perjury and submits it to the state employment security agency (SESA) as part of a written request for certification.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 400,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hr., 47 min.
Learning about the law or the form—37 min.
Preparing, and sending this form to the SESA—36 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 1,596,000 hours.
Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports, Management Officer.
[FR Doc. 02–29234 Filed 11–18–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of Public Debt, 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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the electronic process for selling/issuing, servicing, and making payments on or redeeming U.S. Treasury securities.

DATES: Written comments should be received on or before January 17, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or e-mail to *Vicki.Thorpe@bpd.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:
Title: New TreasuryDirect.
OMB Number: 1535–0138.
Abstract: The information is requested to establish a new account and process transactions.
Current Actions: None.
Type of Review: Extension.
Affected Public: Individuals.
Estimated Number of Respondents: 1.93 million.
Estimated Total Annual Burden Hours: 231,075.
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.

Dated: November 13, 2002.

Vicki S. Thorpe,
Manager, Graphics, Printing and Records Branch.
[FR Doc. 02–29289 Filed 11–18–02; 8:45 am]
BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463 (Federal Advisory Committee Act), gives notice that a meeting of the Advisory Committee on Homeless Veterans will be held from Thursday, December 12, 2002 through Friday, December 13, 2002, at the VA Service Center, 2nd Floor—VOA Meeting Room, 1492 West Flagler Street, Miami, FL 33135. A public meeting will convene Thursday and Friday at 8:30 a.m. and end at 4 p.m. daily. There will be a town hall forum on Thursday from 4 p.m. to 6 p.m. at St. John Bosco Church, 1301 West Flager Street, Miami, FL 33135. The meeting and town hall forum are open to the public. Members of the public must sign up at the town hall meeting in order to speak at the town hall forum. The purpose of the Committee is to advise the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide on-going advice on the most appropriate means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

On December 12, the Committee will receive information about efforts to coordinate services and increase veteran access to homeless services from VA and other health and benefits programs and review new initiatives to assist veterans. A town hall forum will be held to hear comments and concerns from current and formerly homeless veterans, service providers, faith-based organizations and tribal governments. On December 13, the Committee will continue reviews of presentations and discuss future actions for the Committee including formulation of Committee recommendations.

Those wishing to attend the meeting should contact Mr. Pete Dougherty, Department of Veterans Affairs, at (202) 273–5764. No time will be allocated for receiving oral presentations from the public, except during the town hall forum. However, the Committee will accept written comments from interested parties on issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: November 12, 2002.

By Direction of the Secretary.

Nora E. Egan,
Committee Management Officer.
[FR Doc. 02–29269 Filed 11–18–02; 8:45 am]
BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 67, No. 223

Tuesday, November 19, 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 EDUCATION

Notice of Proposed Information Collection Requests

Correction

In notice document 02–28741 appearing on page 68842 in the issue of Wednesday, November 13, 2002, make the following correction:

On page 68842, in the second column, in the **DATES** section, in the second line, ''January 13, 2002'' should read ''January 13, 2003''.

[FR Doc. C2–28741 Filed 11–18–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

October 24, 2002.

Correction

In notice document 02–27939 beginning on page 67176 in the issue of Monday, November 4, 2002 make the following correction:

On page 67176, in the third column, the docket number was removed, the heading is corrected to read as set forth above.

[FR Doc. C2–27939 Filed 11–18–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–66]

Notice of Submission of Proposed Information Collection to OMB: Requirements for Notification of Lead-Based Paint Hazards in Federally-Owned Residential Properties and Housing Receiving Federal Assistance

Correction

In notice document 02–28289 beginning on page 67860 in the issue of Thursday, November 7, 2002, make the following correction:

On page 67860, in the third column, under the **ADDRESSES** heading, in the fifth line, the E-mail address is corrected to read as set forth as set below, ''*Lauren_Wittenberg@omb.eop.gov*.''

[FR Doc. C2–28289 Filed 11–18–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–25–AD; Amendment 39–12905; AD 2002–20–08]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Model 3201 Airplanes

Correction

In rule document 02–26370 beginning on page 64792 in the issue of Tuesday, October 22, 2002, make the following corrections:

§ 39.13 [Corrected]

1. On page 64794, in § 39.13, in the table, in the second column, in the first entry, in the third and fourth lines, ''June 23, 2002'' should read ''June 23, 2000''.

2. On the same page, in the same section, in the same table, in the same column, in the same entry, in the fourth and fifth lines, ''200–09–13'' should read, ''2000–09–13''.

[FR Doc. C2–26370 Filed 11–18–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
November 19, 2002

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 35, 101, et al.

Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations; Proposed Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 101, 154, 201, 346, and 352

[Docket No. RM02–7–000]

Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations

Issued: October 30, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations to update the accounting and reporting requirements for liabilities for asset retirement obligations under its Uniform Systems of Accounts for public utilities, licensees, natural gas companies, and oil pipeline companies.

The Commission proposes to establish uniform accounting and financial reporting for the recognition and measurement of liabilities arising from retirement and decommissioning obligations of tangible long-lived assets and the related capitalized costs. The Commission also proposes to add new income statement accounts to the Uniform Systems of Accounts to record the accretion of the liability and the depreciation of the related capitalized costs. The Commission proposes to add or revise as necessary the definitions, general and plant instructions, and balance sheet and income statement accounts contained in the Uniform Systems of Accounts. Additionally, the Commission proposes to revise its rate filing requirements to incorporate the above mentioned changes.

Finally, the Commission proposes to revise the following Annual Reports: FERC Form No. 1, Annual Report of Major Public Utilities, Licensees and Others (Form 1); FERC Form No. 1–F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1–F); FERC Form No. 2, Annual Report of Major Natural Gas Companies (Form 2); FERC Form No. 2–A, Annual Report of Nonmajor Natural Gas Companies (Form 2–A); and Form No. 6, Annual Report of Oil Pipeline Companies (Form 6) to include the new accounts and revised schedules proposed by this rulemaking.

An important objective of the proposed rule is to provide sound and uniform accounting and financial reporting for the above types of transactions and events. The new instructions and accounts will result in improved, consistent and complete accounting and reporting of liabilities for obligations associated with the retirement of tangible long-lived assets and the related asset retirement costs capitalized. The additions of new accounts and changes to the FERC Forms noted above will add visibility, completeness and consistency of the accounting and reporting of liabilities for asset retirement obligations and the related asset retirement costs capitalized.

DATES: Comments on the proposed rulemaking are due on or before January 3, 2003.

ADDRESSES: File written comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments should reference Docket No. RM02–7–000. Comments may be filed electronically or by paper (an original and 14 copies, with an accompanying computer diskette in the prescribed format requested).

FOR FURTHER INFORMATION CONTACT:

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I. Introduction

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes to revise its Uniform Systems of Accounts [1] for public utilities and licensees,[2] natural gas companies [3] and

[1] Section 301(a) of the Federal Power Act (FPA), 16 U.S.C. 825(a), section 8 of the Natural Gas Act (NGA), 15 U.S.C. 717g and section 20 of the Interstate Commerce Act (ICA) 49 App. U.S.C. 20 (1988), authorize the Commission to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for the purposes of administering the FPA, NGA and the ICA. The Commission may prescribe a system of accounts for jurisdictional entities and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited.

[2] Part 101 Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act. *See* 18 CFR part 101 (2002).

[3] Part 201 Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. *See* 18 CFR part 201 (2002).

oil pipeline companies[4] for the recognition of liabilities for legal obligations associated with the retirement of tangible long-lived assets and the associated capitalization of these amounts as part of the cost of the asset giving rise to the obligation.

2. The purpose of the NOPR is to improve the usefulness of financial information provided to the Commission and other users of the FERC Forms by establishing uniform accounting and reporting requirements for legal obligations associated with the retirement of tangible long-lived assets. The Commission proposes to add or revise as necessary the definitions, general and plant instructions, and balance sheet and income statement accounts contained in the Uniform Systems of Accounts to incorporate the proposed changes for the accounting for asset retirement obligations. The Commission is of the view that such requirements are needed because these types of transactions and events are not clearly or consistently reported. This NOPR is part of the Commission's ongoing effort to address emerging accounting developments within the context of the Uniform Systems of Accounts.

3. The proposed accounting for asset retirement obligations is consistent with the accounting and reporting requirements that jurisdictional entities will use in their general purpose financial statements provided to shareholders and the Securities Exchange Commission (*e.g.*, companies will separately account and report the liability for the asset retirement obligations, capitalize the asset costs, and charge earnings for depreciation of the asset and operating expense for the accretion of the liability).

4. An asset retirement obligation is a liability resulting from a legal obligation to retire or decommission a plant asset. The types of work activities typically include removing or dismantling the asset. For example, public utilities have a legal liability to decommission nuclear plants under certain Nuclear Regulatory Commission (NRC) regulations. The activities would include the dismantlement and removal of the reactor vessel and the related contaminated facilities. Natural gas pipeline companies may have legal liabilities to remove compressor stations and related piping under state regulations, local ordinances or agreements entered into with the landowners. Offshore pipelines may have legal obligations that arise under federal and state site clearance requirements to remove the offshore platforms, wells, pilings and other appurtenances resulting from the retirement of such facilities. However, certain assets may not have legal obligations if no law, statute, ordinance, or contract exists to remove or dismantle the facilities.

5. Business entities have accounted for legal obligations in various ways. Some business entities recognize these asset retirement obligations gradually over the life of the asset as part of depreciation expense while others have not recognized any liability for the legal obligations for the asset to be retired. Under the proposed accounting all entities must record the present value of the legal obligation at the time it is incurred.

6. To illustrate, the owner of a nuclear plant estimates that the cost to decommission the facilities as required by law is $400,000 ten years from today. Under the current practice the owner records $40,000 ($400,000/10 years) of additional depreciation expense each year for the cost of removing the plant. This simplified example ignores interest earnings, etc. on amounts placed in an external fund.

7. The new accounting standard requires that the owner record a liability for the present value of the $400,000. Assuming a $100,000 present value, the owner initially records a liability of $100,0000 and capitalizes a corresponding amount as part of the asset costs. The liability recorded will increase or grow over time (time value of money) until the actual retirement activity commences and the liability is settled (paid). Both approaches recognize the same total expenses of $400,000 over the asset's useful life. Under the new accounting standard, the total expenses are made up of $100,000 in depreciation on the capitalized asset costs plus $300,000 for the time value of money, while under the current practice the decommissioning liability is recognized on a pro rata basis over the life of the plant as depreciation expense of $400,000.

8. In summary, the new accounting standard requires the present value of the liability to be recorded for all assets. Additionally, the entity capitalizes this amount as part of the cost of the plant and depreciates it over the useful life of the related asset.

9. Finally, a gain or loss may be recognized for any difference between the estimated liability and the actual amount paid to settle the asset retirement obligation. In the example above, if the owner paid a contractor $380,000 to remove the plant and thereby settle the obligation, a gain of $20,000 will be recognized for the difference between the $400,000 liability recorded on its books and the $380,000 paid to the contractor for the work performed.

10. The Commission also proposes to revise its rate filing requirements to accommodate the above mentioned changes. In that regard, we specifically note that the proposed accounting will not affect jurisdictional entities' ability to recover costs arising from asset retirement obligations in rates. However, public utilities, licensees, natural gas and oil pipeline companies with formula rate tariffs must seek approval with the Commission prior to implementing the accounting changes, if doing so would affect tariff billings.

11. Finally, the Commission proposes to revise the following Annual Reports: FERC Form No. 1, Annual Report of Major Public Utilities, Licensees and Others (Form 1); FERC Form No. 1–F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1–F); FERC Form No. 2, Annual Report of Major Natural Gas Companies (Form 2); FERC Form No. 2–A, Annual Report of Nonmajor Natural Gas Companies (Form 2–A); and FERC Form No. 6, Annual Report of Oil Pipeline Companies (Form 6) to include the new accounts and the revised schedules proposed in this rulemaking.[5]

II. Background

12. The recognition and measurement of legal liabilities associated with the retirement and decommissioning of long-lived assets by various entities, including Commission jurisdictional entities, has been inconsistent over the years. The usefulness of consistently recognizing and measuring asset retirement obligations in the financial statements resulted in the Financial Accounting Standards Board (FASB) issuing a new accounting pronouncement affecting the manner in which legal obligations are measured and reported in the financial statements applicable to entities in general.[6] The

[4] Part 352 Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act. *See* 18 CFR part 352 (2002).

[5] The FERC Annual Reports bear the following OMB approval control numbers: Form 1 has OMB approval number 1902–0021; Form 1–F has OMB approval number 1902–0029; Form 2 has OMB approval number 1902–0028; Form 2–A has OMB approval number 1902–0030; and Form 6 has OMB approval number 1902–002.

[6] The accounting pronouncement issued by FASB was Financial Accounting Standards (FAS) No. 143, Accounting for Asset Retirement Obligations, issued in June 2001. The accounting may be obtained from FASB at *http://accounting.rutgers.edu/raw/fasb//*.

major objective of this change in accounting by FASB is to provide standards for the recognition and measurement of liabilities for asset retirement obligations associated with the retirement of tangible long-lived assets. When an entity acquires or constructs an asset, it may incur certain legal obligations associated with the future retirement of that asset. These obligations are generally referred to as asset retirement obligations. An asset retirement obligation is a legal obligation associated with the retirement of a tangible long-lived asset that an entity is required to settle as a result of an existing enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel.[7]

13. An entity essentially recognizes a liability for the fair value of an asset retirement obligation at the time the asset is constructed, acquired, or when a change in the law creates a legal obligation to perform the retirement activities. Upon initial recognition of that liability, an entity also increases the cost of the related asset that gives rise to the legal obligation by the same amount.[8] The liability is increased over time until the actual retirement activity commences.[9] Additionally, the asset retirement cost capitalized is depreciated over the same life of the related asset giving rise to the obligation. An entity is required to remeasure the liability due to the passage of time and certain other changes in the estimate of the liability.[10]

14. Business entities are required to apply the standards for accounting for asset retirement obligations to all existing assets as if the accounting requirements had always been in existence for such assets, as well as those under construction that have associated legal obligations for their disposal or retirement.[11]

15. The accounting standards for asset retirement obligations rely on the general standards of accounting for the effects of regulation for regulated entities in accordance with FASB Statement No. 71, *Accounting for the Effects of Certain Types of Regulation,* (FAS 71).[12] Therefore, an entity must recognize a regulatory asset or regulatory liability if the requirements of FAS 71 are met. The Commission established regulatory assets and liabilities which apply to public utilities, licensees and natural gas companies.[13]

16. The Commission considers it desirable for its accounting requirements and those used by jurisdictional entities for general purpose financial reporting to be consistent. Currently, some jurisdictional entities do not recognize asset retirement obligations in the Uniform Systems of Accounts while other jurisdictional entities only recognize the amounts included in the rate setting process as a component of accumulated depreciation. The Commission is of the view that the accounting for asset retirement obligations to be an improvement in financial accounting and reporting practices. The Commission notes that the proposed rule will improve consistency in accounting and reporting of legal obligations to retire tangible long-lived assets which under current accounting practices are accounted and reported in an inconsistent manner. The Commission also notes that the proposed rule will provide the Commission's stakeholders with more transparent financial statement disclosure of the costs related to the legal obligation in the FERC Annual Reports. The proposed rule is consistent with the enhanced disclosure initiatives announced by the Security Exchange Commission to ensure more important transparent and comprehensive accounting and reporting information will be provided by business entities to their stakeholders.

17. In an effort to eliminate the inconsistencies in accounting practices by jurisdictional entities for asset retirement obligations, the Commission proposes to provide in the Uniform Systems of Accounts accounting requirements for the recognition and measurement of liabilities for obligations associated with the retirement and decommissioning of tangible long-lived assets. The Commission considers that the proposed rule for asset retirement obligations will provide consistent accounting and reporting requirements for the recognition and measurement of liabilities for legal obligations associated with the retirement of long-lived assets and the capitalization of the related asset retirement costs. The proposed rule, if adopted, will initially result in a minimal increase in burden as a result of standardizing the accounting and reporting for asset retirement obligations for regulatory purposes. The proposed rule will eliminate the need by jurisdictional entities to maintain duplicate sets of books.

18. Finally, on May 7, 2002, Commission staff held an informal technical conference to discuss the financial accounting, reporting and ratemaking implications related to obligations associated with the retirement of tangible long-lived assets.[14] The main purpose for convening this technical conference was to afford an opportunity for the electric, natural gas and oil pipeline industries and other interested parties to discuss the financial and reporting implications related to asset retirement obligations on the Commission's existing accounting and rate regulations. The Commission staff received suggestions from the participants at the technical conference which have been incorporated into the NOPR, to the maximum extent possible.

III. Discussion of Proposed Revisions to Regulation for Public Utilities, Licensees, and Natural Gas Companies

A. General

19. The Commission's existing Uniform Systems of Accounts and Annual Report Forms for public utilities, licensees, and natural gas companies do not contain adequate instructions and accounts to provide for the recording of liabilities for asset retirement obligations and the associated asset retirement costs. Therefore, the following changes are proposed to our existing accounting and reporting regulations to provide transparent accounting and reporting to this Commission and other users of the FERC Forms 1, 1–F, 2 and 2–A any legal liabilities related to the future retirement or decommissioning of utility and nonutility plant.

B. Proposed New Accounts for Asset Retirement Obligations

20. The Commission proposes to create a new noncurrent liability account entitled account 230, Asset

[7] *See* FAS 143, Appendix A, paragraphs A2 through A5, for a discussion of the scope of the legal obligations covered under the pronouncement.

[8] *See* FAS 143, paragraphs 11, for a discussion of the recognition and allocation of an asset retirement cost.

[9] *See* FAS 143, paragraphs 8 and 9, for a discussion of the ''credit adjusted risk free rate'' used to measure the fair value of the asset retirement obligation.

[10] *See* FAS 143, paragraphs 13 through 16, for a discussion of the discussion of the subsequent recognition and measurement of the asset retirement obligation.

[11] *See* FAS 143, paragraphs 24 and 25, for a detailed of the accounting for the cumulative effect of a change in accounting principle.

[12] *See* FAS 143, paragraphs 19 through 21 for a discussion of the subsequent recognition and measurement of the asset retirement obligation.

[13] *See* Order No. 552, 58 FR 17,982 (Apr. 7, 1993), *FERC Stats. & Regs., Regulations Preambles January 1991–June 1996* ¶ 30,967, at pp. 30,823–26 (Mar. 31, 1993) for guidance on the recognition of regulatory assets and regulatory liabilities when certain criteria conditions are met.

[14] *See* 67 FR 16,071 (April 4, 2002) and 67 FR 20,922 (April 29, 2002).

retirement obligations, to record legal liabilities related to the future retirement or decommissioning of utility and nonutility plant for public utilities and licensees in part 101 (part 101) of the Commission's regulations and for natural gas companies in part 201 (part 201) of the Commission's regulations. The new proposed account 230, Asset retirement obligations, will record the fair value of the liability based upon a present value calculation. These amounts will increase or grow over time until the liability is settled. The process of increasing the liabilities recorded in account 230, Asset retirement obligations, is referred to as an ''accretion'' to record the increase or growth in the liability due to the passage of time. The Commission proposes to create a new income statement account entitled account 411.10, Accretion expense, in parts 101 and 201 of the Commission's regulations to record the increase or growth in the liability due to the passage of time. The proposed account 411.10 will provide for the accretion expense of asset retirement obligations due to the passage of time.

C. Proposed New Accounts for Capitalized Asset Retirement Costs

21. Under the new accounting requirements, when an entity records a liability for an asset retirement obligation, it concurrently capitalizes that amount as part of the asset's cost. Effectively, the fair value of the obligation becomes part of the overall cost of the asset, similar to other amounts that are capitalized as part of the asset's construction or acquisition cost to separately identify these in the electric and gas utility plant records. The Commission proposes to create the following new primary plant accounts for each plant functions within account 101, Electric plant in service (Major only), for public utilities and licensees in part 101 of the Commission's regulations, and account 101, Gas plant in service, for natural gas companies in part 201 of the Commission's regulation, to record separately these amounts across the life of the asset.

22. For account 101, Electric plant in service (Major only), the new proposed primary plant accounts are shown in the following table:

	Public utilities and licensees	Proposed new primary plant accounts
1	Steam Production Plant	317, Asset retirement costs for steam production plant.
2	Nuclear Production Plant	326, Asset retirement costs for nuclear production plant.
3	Hydraulic Production Plant	337, Asset retirement costs for hydraulic production plant.
4	Other Production Plant	347, Asset retirement costs for other production plant.
5	Transmission Plant	359.1, Asset retirement costs for transmission plant.
6	Distribution Plant	374, Asset retirement costs for distribution plant.
7	General Plant	399.1, Asset retirement costs for general plant.

23. For account 101, Gas plant in service, the new proposed primary plant accounts are shown in the following table below:

	Natural gas companies	Proposed new primary plant accounts
1	Manufactured Gas Production Plant	321, Asset retirement costs for manufactured gas production plant.
2	Natural Gas Production Plant	339, Asset retirement costs for natural gas production and gathering plant.
3	Products Extraction Plant	348, Asset retirement costs for products extraction plant.
4	Underground Storage Plant	358, Asset retirement costs for underground storage plant.
5	Other Storage Plant	363.6, Asset retirement costs for other storage plant.
6	Base Load Liquefied Natural Gas Terminaling and Processing Plant	364.9, Asset retirement costs for base load liquefied natural gas terminaling plant.
7	Transmission Plant	372, Asset retirement costs for transmission plant.
8	Distribution Plant	388, Asset retirement costs for distribution plant.
9	General Plant	399.1, Asset retirement costs for general plant.

24. The Commission proposes that the amounts in the above primary plant accounts be depreciated over the life of the electric and gas utility plant giving rise to the asset retirement obligations. In order to separately identify the depreciation expense recorded on capitalized asset retirement costs related to electric and gas utility plant, the Commission proposes to create a new depreciation expense account entitled account 403.1, Depreciation expense for asset retirement costs, in parts 101 and 201 of the Commission's regulations to record these amounts on the income statement.

D. Proposed New General Instructions for Accounting for Asset Retirement Obligations

25. In addition to the above mentioned new accounts, the Commission also proposes to create a new General Instruction 25, Accounting for asset retirement obligations, for public utilities and licensees in part 101 and a new General Instruction 24, Accounting for asset retirement obligations, for natural gas companies in part 201 of the Commission's regulations to provide additional direction for the accounting for the recognition of asset retirement costs and related obligations. These proposed General Instructions provide for the capitalization of the asset retirement costs in electric and gas utility plant and nonutility plant accounts as appropriate. It also provides for the liability to be recorded in the new proposed noncurrent liability account 230, Asset retirement obligations, in parts 101 and 201 of the Commission's regulations.

26. Under proposed General Instruction 25 in part 101 and General Instruction 24 in part 201 of the Commission's regulations, the Commission proposes that the accretion of the liability be debited to the new proposed account 411.10, Accretion expense, for electric and gas utility plant, and the existing account 413, Expenses of electric plant leased to others, and account 413, Expenses of gas plant leased to others, for utility plant

leased to others and account 421, Miscellaneous nonoperating income, for nonutility plant.

27. Finally, when an asset retirement obligation is settled by a jurisdictional entity, a gain or loss can result from the difference between the estimated amount of the asset retirement obligation liability included in proposed account 230, Asset retirement obligations, and the actual amount paid to settle the obligation. For example, an entity may settle its asset retirement obligation by either using its internal workforce or paying a third party to perform the work to retire the electric or gas utility plant. If the amount of the liability included in account 230, Asset retirement obligations, is greater or less than the actual amount paid to settle the obligation, a gain or loss will be incurred. The Commission proposes to record gains or losses resulting from the settlement of asset retirement obligations for electric and gas utility plant in account 411.6, Gains from disposition of utility plant, and the account 411.7, Losses from disposition of utility plant, respectively.[15] The Commission proposes to revise the text of accounts 411.6 and 411.7 in Parts 101 and 201 of the Commission's regulations to record gains in account 411.6 and losses in account 411.7 resulting from the settlement of asset retirement obligations related to utility property.

28. The Commission proposes that any gains or losses relating to the settlement of asset retirement obligations for nonutility plant must be recorded directly in account 421, Miscellaneous nonoperating income, and account 426.5, Other deductions, respectively. The Commission proposes to revise the text of accounts 421 and 426.5 in parts 101 and 201 of the Commission's regulations to record gains in account 421 and losses in account 426.5 resulting from the settlement of asset retirement obligations related to nonutility property.

29. Finally, the Commission proposes that jurisdictional entities keep subsidiary records and supporting documentation for each asset retirement obligation in order to be able to furnish accurately and expeditiously the full details of the identity and nature of the legal obligation, the year incurred, the identity of the plant giving rise to the obligation, the full particulars relating of each component and supporting computations related to the measurement of the asset retirement obligation.

E. Other Revisions to the Uniform Systems of Accounts

30. The Commission also proposes to revise the following additional existing definitions and general instructions, and revise the text of certain balance sheet and income statement accounts to the Uniform Systems of Accounts in parts 101 and 201 of the Commission's regulations to incorporate the accounting for asset retirement obligations as discussed above.

1. Proposed Revisions to the Cost of Removal Definition

31. Under the Uniform Systems of Accounts in parts 101 and 201 of the Commission's regulations, jurisdictional entities record cost of removal related to the disposition and retirement of long-lived assets as a component of depreciation expense. The definition of cost of removal as presently contained in the Uniform Systems of Accounts includes the costs of demolishing, dismantling, tearing down or otherwise removing the electric or gas plant.[16] Certain cost of removal activities falling within this definition may relate to a legal obligation associated with the retirement of a long-lived asset while others may not relate to a legal obligation to retire a long-lived asset. Under the proposed rule, retirement activities which constitute legal obligations must be removed from cost of removal and accounted for separately as liabilities for legal obligations that are capitalized as part of the tangible long-lived assets that give rise to the obligation. The Commission proposes to amend the definition of cost of removal to exclude legal obligations related to the retirement of long-lived assets at the end of their service life because the asset retirement costs and related obligations will be separately recognized on the balance sheet and income statement.

2. Proposed Revisions to Electric and Gas General Instruction 20, Accounting for Leases

32. Under the Uniform Systems of Accounts in parts 101 and 201 for public utilities, licensees, and natural gas companies, there are no provisions under General Instruction 20, Accounting for leases, for the recognition of a liability for an asset retirement obligation and the related asset retirement costs that are not recognized as part of the liability related to minimum lease payments for a capital lease. The Commission proposes to add a new instruction to General Instruction 20, Accounting for leases, that provides when an entity incurs an asset retirement obligation through assumption of a capital lease, the entity must recognize the liability in account 230, Asset retirement obligations, and record the related asset retirement costs in account 101.1, Property under capital leases, account 120.6, Nuclear fuel under capital leases, or account 121, Nonutility property, as appropriate.

3. Proposed Revisions to Electric and Gas Plant Instructions

33. For public utilities, licensees, and natural gas companies, there are no specific provisions under the Uniform Systems of Accounts to allow for the capitalization of asset retirement costs related to legal obligations that were incurred during the construction of tangible long-lived assets. The Commission proposes to revise Electric and Gas Plant Instructions 3, Components of construction cost, in parts 101 and 201 of the Commission's regulations by adding asset retirement costs to the item list as a new construction cost component that is capitalized if incurred during the construction phase of a long-lived asset that gives rise to a legal obligation. However, since there will be no immediate cash expenditure during the construction phase for this cost, the Commission proposes to exclude this cost from the construction work in progress base for calculating the allowance for funds used during construction (AFUDC).

4. Proposed Revision to Account 121, Nonutility Property

34. The Commission proposes to revise the instructions to account 121, Nonutility property, contained in parts 101 and 201 of the Commission's regulations to require the asset retirement costs associated with the nonutility plant to be recorded in account 121. The Commission also proposes that the depreciation expense on the asset retirement costs included in account 121 must be recorded in account 421, Miscellaneous nonoperating income, in parts 101 and 201 of the Commission's regulations.

5. Proposed Revisions to Electric and Gas Utility Operating Income Accounts

35. The Commission proposes to add a new instruction to account 411.6, Gains from disposition of utility plant, and account 411.7, Losses from disposition of utility plant, to record

[15] *See* Order No. 552, *supra* note 13 for guidance on the recognition of regulatory assets and regulatory liabilities when certain criteria conditions are met.

[16] *See* Definition 10 in 18 CFR part 101 (Public Utilities and Licensees), and Definition 10 in 18 CFR part 201 (Natural Gas Companies).

gains and losses, respectively, resulting from the settlement of asset retirement obligations in accordance with the accounting prescribed in the new proposed General Instruction 25 in part 101 of the Commission's regulations. The Commission also proposes to add a similar instruction in accounts 411.6 and 411.7 to record gains or losses in accordance with the accounting prescribed for natural gas companies in the new proposed General Instruction 24 in part 201 of the Commission's regulations.

F. Proposed Accounting for Transition Adjustments

36. The Commission proposes that at the adoption of the final rule, jurisdictional entities must apply the proposed requirements of the rule to all existing long-lived assets at January 1, 2003, with legal obligations associated with the future retirement or disposal of those assets.

37. The Commission proposes at the initial date of the adoption of the accounting for asset retirement obligations rule, jurisdictional entities recognize a transition adjustment for a liability for any existing asset retirement obligation adjusted for the cumulative accretion on the liability and capitalize the associated asset retirement costs and the related accumulated depreciation on the capitalized costs. The Commission proposes that jurisdictional entities measure the transitional adjustment for the asset retirement cost and related liability for the retirement obligations for existing long-lived asset as of the date that the retirement obligation was incurred and would have been recognized through January 1, 2003. The transitional adjustment recognized for the existing long-lived asset represents the cumulative accretion of the liability and the accumulated depreciation on the related capitalized asset retirement cost from the date the obligation would have been incurred through January 1, 2003.

38. The Commission proposes that when the amount of any previously recognized asset retirement obligation recorded in account 108 and account 110 for major and non-major public utilities and licensees, respectively, and account 108 for natural gas companies is greater than the amount recognized under the proposed rule, the excess must be credited to account 254, Other regulatory liabilities. However, when the amount of any previously recognized asset retirement obligation in account 108 and account 110 for major and non-major public utilities and licensees, respectively, and account 108 for natural gas companies is less than the amount recognized under the proposed rule, the Commission proposes that the difference must be charged to income in account 435, Extraordinary deductions, and the related income taxes recorded in account 409.3, Income taxes, extraordinary items, and reported as a cumulative effect of a change in accounting principle.[17] The Commission notes that jurisdictional entities must record a regulatory asset for part, or all of the cumulative effect of a change in accounting principle in account 182.3, Other regulatory assets, if the requirements for recording a regulatory asset under Order No. 552 are met.[18]

39. For public utilities, licensees and natural gas companies, the instructions to account 108 and account 110 for major and non-major public utilities and licensees, respectively, in part 101 of the Commission's regulations [19] and account 108 for natural gas companies in part 201 of the Commission's regulations [20] requires the Commission's approval to remove amounts from these accounts. For any excess amounts removed from account 108 and 110, the Commission proposes that the final rule issued in this proceeding will constitute the requisite authority for jurisdictional entities to remove amounts from account 108 and 110 to account 254.

40. The Commission proposes that jurisdictional entities must charge the cumulative accretion expense on the liability for existing legal obligations to account 435, Extraordinary deductions, and the related income taxes in account 409.3, Income taxes, extraordinary items, under parts 101 and 201 of the Commission's regulations and report such amounts in net income as a cumulative effect of a change in accounting principle.[21] The Commission also proposes that the cumulative accretion expense related to the liabilities for the asset retirement obligations may be included in account 182.3, if the requirements for recording a regulatory asset under Order No. 552 are met.[22]

41. In summary, the Commission proposes at the date of adoption of the final rule, jurisdictional entities must record the liability for asset retirement obligation associated with those long-lived asset existing at January 1, 2003, in the new proposed account 230, Asset retirement obligations. The jurisdictional entities must capitalize the related asset retirement costs in the proposed primary plant accounts within the plant functions applicable to the utility plant that gives rise to the obligations. The Commission also proposes that jurisdictional entities must record any cumulative transition adjustments associated with the asset retirement obligations for existing long lived assets at the date of the adoption of the final rule in the appropriate accounts in the manner as prescribed above.

G. Proposed Revisions to Tariff Filing Requirements Under 18 CFR Part 35 and 18 CFR Part 154

42. The Commission's proposed rule will require public utilities, licensees or natural gas companies for accounting purposes to recognize asset retirement obligations. The Commission is not requiring jurisdictional entities with stated rate tariffs to make any tariff filings with the Commission due to this rulemaking at this time. However, public utilities, licensees and natural gas companies with formula rate tariffs must not include any cost components related to asset retirement obligations in their formula rate billing determinations for automatic recovery prior to obtaining Commission approval.

43. The Commission proposes that to the extent, if any, a particular asset retirement cost should be allowed recovery through jurisdictional rates, it shall be addressed on a case by case basis in the individual rate change proposals filed by public utilities, licensees, and natural gas companies. Although the proposed accounting rules require the recording of an asset retirement cost, the Commission recognizes that no actual cash expenditures are made or required until

[17] When authorized by the Commission, amounts related to a cumulative effect of a change in accounting principles have been reported in account 435. The effect on net income for amounts charged to account 435 must be reported on the income statement on the lines designated for extraordinary deductions in FERC Forms 1, 1–F, 2, and 2–A. Public utilities, licensees and natural gas companies must disclose in a footnote in the FERC Forms 1, 1–F, 2, and 2–A the full particulars of the amounts reported as a cumulative effect of a change in accounting principle.

[18] *See* Order No. 552, *supra* note 13, for guidance on the recognition of regulatory assets and regulatory liabilities when certain criteria conditions are met.

[19] *See* paragraph E to account 108, Accumulated provision for depreciation of electric utility plant (Major only), and paragraph E to account 110, Accumulated provision for depreciation and amortization of electric utility plant (Nonmajor only), in 18 CFR part 101 (Public Utilities and Licensees).

[20] *See* paragraph E to account 108, Accumulated provision for depreciation of gas utility plant, in 18 CFR part 201 (Natural Gas Companies).

[21] *See* supra note 17.

[22] *See* Order No. 552, *supra* note 13, for guidance on the recognition of regulatory assets and regulatory liabilities when certain criteria conditions are met.

the long-lived assets are retired from service.

44. Therefore, it would be inappropriate for public utilities, licensees, and natural gas companies to include these asset retirement costs in rate base and collect a rate of return allowance and related income taxes on these amounts in jurisdictional rates. To ensure that all rate base amounts related to these assets can be identified and excluded from the rate base calculation in a rate change filing, the Commission is proposing to add new §§ 35.18 and 154.315 to its rate change filing requirements. These new regulations require that public utilities, licensees, and natural gas companies which have recorded an asset retirement obligation on their books in accordance with this proposed rule must, as part of any initial rate filing or general rate change filing, provide a schedule identifying all cost components related to the asset retirement obligation that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. In addition, the proposed regulations require that all rate base items related to asset retirement obligations be removed from the rate base computation through an adjustment. If the public utility, licensee or natural gas company is seeking recovery of an asset retirement obligation in rates, it must also provide a detailed study supporting the amounts proposed to be collected in rates. If the public utility, licensee or natural gas company is not seeking recovery of the asset retirement obligation in rates, then it must remove all cost components related to asset retirement obligations from its cost of service.

45. The Commission is aware that a number of natural gas companies are currently collecting an allowance in jurisdictional rates to cover the future cost of retiring and removing facilities. This allowance is referred to as a negative salvage allowance. The Commission believes that these negative salvage allowances do not necessarily reflect the existence of a legal asset retirement obligation. Therefore, the Commission will require that negative salvage allowances that are not established due to an asset retirement obligation be identified for rate making purposes separately from asset retirement obligation allowances. The current rate change filing requirements for natural gas companies at § 154.312(d), Statement D, requires that any authorized negative salvage must be maintained in a separate subaccount of account 108, Accumulated provision for depreciation of gas utility plant. The Commission proposes to amend this section to ensure that this subaccount must not include any amounts related to asset retirement obligations.

IV. Discussion of Proposed Revisions to Regulations for Oil Pipeline Companies

A. General

46. Similar to the accounting changes for public utilities, licensees and natural gas companies, the Commission proposes to provide accounting requirements for asset retirement obligations in the Uniform Systems of Accounts for oil pipeline companies in part 352 of the Commission's regulations. Therefore, the following changes are proposed to the Commission's existing accounting regulations to provide transparent accounting and reporting of these amounts to this Commission and other users of the FERC Form 6.

B. Proposed New Accounts for Asset Retirement Obligations

47. The Commission proposes to create a new noncurrent liability account entitled account 67, Asset retirement obligations, in part 352 of the Commission's regulations to record legal liabilities related to the future decommissioning or retirement of carrier and noncarrier property. The Commission also proposes to create a new income statement account entitled account 591, Accretion expense, to record the increase in the liability due to the passage of time.

C. Proposed New Accounts for Capitalized Asset Retirement Costs

48. Under the new accounting requirements, when an oil pipeline records a liability for its asset retirement obligation, it concurrently capitalizes that amount in the carrier property accounts. In order to separately identify this cost in the carrier property records, the Commission proposes to create new carrier primary property accounts within existing account 30, Carrier property, for oil pipelines in part 352 of the Commission's regulations to separately identify these amounts throughout the life of the asset. The new proposed carrier primary property accounts are shown on the following table below:

	Oil pipeline companies	Proposed new primary property accounts
1	Gathering Lines	117, Asset retirement costs for gathering lines.
2	Trunk Lines	167, Asset retirement costs for trunk lines.
3	General Property	186.7, Asset retirement costs for general.

49. The Commission proposes the amounts in the above carrier primary property accounts be depreciated over the life of the carrier property that gives rise to the asset retirement obligations. In order to identify the depreciation expense recorded on capitalized asset retirement costs, the Commission proposes to create a new depreciation expense account entitled account 541, Depreciation expense for asset retirement costs, to separately record these amounts on the income statement.

D. Proposed New General Instruction for Accounting for Asset Retirement Obligations

50. The Commission also proposes to create a new General Instruction 1–19, Accounting for asset retirement obligations, to provide the accounting for the recognition of asset retirement costs and obligations, in part 352 of the Commission's regulations. The new proposed General Instruction 1–19 will provide for the liability to be recorded in the new proposed noncurrent liability account entitled account 67, Asset retirement obligations, and the capitalization of the asset retirement costs in carrier and noncarrier property accounts.

51. Under proposed General Instruction 1–19, the Commission proposes to provide for recording the accretion of the liability for carrier property in the new proposed account 591, Accretion expense, and for noncarrier property in the existing account 620, Income (net) for noncarrier property.

52. Under proposed General Instruction 1–19, the Commission proposes that gains or losses resulting from the difference between the amount of the liability for the asset retirement obligation in account 67, Asset

retirement obligations, and the actual amount of the settlement of the obligation for carrier property be recorded directly in the new proposed account 592, Gains or losses on asset retirement obligations, and for noncarrier property in the existing account 620, Income (net) from noncarrier property. The Commission proposes to add a new account 592, Gains or losses on asset retirement obligations, in part 352 of the Commission's regulations to include gains and losses resulting from the settlement of asset retirement obligations.

53. The Commission also proposes in General Instruction 1–19 that oil pipeline companies maintain for purposes of analyses subsidiary records and supporting documentation for each asset retirement obligation to be able to furnish accurately and expeditiously the full details of the nature of the legal obligations and full particulars of the components and computations relating to the recognition and measurement of the asset retirement obligation.

E. Other Revisions to the Uniform Systems of Accounts

54. The Commission also proposes to revise certain existing definitions, certain existing general instructions, and the text of certain balance sheet accounts in the Uniform Systems of Accounts for oil pipeline companies in part 352 of the Commission's regulations to incorporate the accounting for asset retirement obligations.

1. Proposed Revisions to the Cost of Removal Definition

55. Under the Uniform Systems of Accounts under part 352 of the Commission's regulations, certain oil pipelines record cost of removal related to the disposition and retirement of long-lived assets as a component of depreciation expense. The Uniform Systems of Accounts definition of cost of removal as presently written includes the cost of demolishing, dismantling, tearing down or otherwise removing the property.[23] Certain cost of removal activities falling within this definition may relate to a legal obligation associated with the retirement of a long-lived asset while others may not relate to the legal obligation to retire the long-lived asset. The Commission proposes to amend the definition of cost of removal to exclude legal obligations related to the retirement of long-lived assets at the end of their service life because the asset retirement costs and related obligations will be separately recognized on the balance sheet and income statement.

2. Proposed Revisions to Instructions for Carrier Property Accounts

56. Under the Uniform Systems of Accounts in part 352 of the Commission's regulations for oil pipelines, there are no specific provisions to allow for the capitalization of an asset retirement cost related to a legal obligation that was incurred during the construction of tangible long-lived assets. The Commission proposes to revise the instructions for carrier property accounts, Instruction 3–3, Cost of property constructed, to add a new item for asset retirement costs incurred during the construction that will constitute a component of construction costs. The Commission proposes to exclude this cost from the construction work in progress base for calculating interest during construction because there will be no immediate cash expenditure during the construction phase for this cost.

3. Proposed Revisions to Account 34, Noncarrier Property

57. The Commission proposes to include the asset retirement costs associated with noncarrier property that gives rise to the obligation in account 34, Noncarrier property, in part 352 of the Commission's regulations. The Commission also proposes that depreciation expense related to the capitalized retirement costs included in account 34, Noncarrier property, must be recorded in account 620, Income (net) from noncarrier property.

4. Proposed New Account for Operating Expenses

58. As discussed above under the new proposed General Instruction 1–19, the Commission proposes to add a new account 592, Gains or losses on asset retirement obligations, in part 352 of the Commission's regulations to include gains and losses resulting from the settlement of asset retirement obligations for carrier property.

F. Proposed Accounting for Transition Adjustments

59. The Commission proposes that at the adoption of the final rule, oil pipeline companies recognize the liability for existing asset retirement obligation and recognize the cumulative accretion of the liability, associated asset retirement costs and the related accumulated depreciation for the capitalized costs. The transition adjustment for the cumulative effect of the accretion of the liability and the accumulated depreciation on the related capitalized asset retirement costs is measured from the date the obligation would have been incurred and recognized through January 1, 2003, the initial date of adoption of the final rule.

60. The Uniform Systems of Accounts for oil pipeline companies in part 352 of the Commission's regulations provides that any change in accounting principle must be referred to this Commission for approval.[24] For oil pipeline companies the cumulative effect of a change in accounting principle is ordinarily reflected in account 697, Cumulative effect of changes in accounting principles, in the year of adoption. The Commission proposes that the final rule in this proceeding will constitute the requisite authorization for oil pipeline companies to reflect the change as a cumulative effect of a change in accounting principles in account 697.

61. The Commission proposes that the difference of any amount previously recognized for the asset retirement obligation recorded in account 31, Accrued depreciation—carrier property, and the amount recognized under the proposed rule, must be charged to account 697. The Commission also proposes that oil pipeline companies must charge the cumulative accretion expense on the liability for existing legal obligations to account 697 as a cumulative effect of a change in accounting principle.

62. In summary, the Commission proposes that oil pipeline companies must record the liabilities associated with asset retirement obligations for those existing assets that would be incurred at the initial date of adoption of the final rule in the new proposed account 67, Asset retirement obligations, and capitalize the related asset retirement costs in the new proposed primary carrier property accounts within the carrier property class related to the carrier property that gives rise to the legal obligations. The Commission proposes that oil pipeline companies must include the cumulative accretion of the liability for the legal obligations in account 67, Asset retirement obligations, from the date incurred through the initial date of adoption of the final rule by charging account 697. The Commission also proposes that oil pipeline companies

[23] *See* Definition 12 in 18 CFR part 352 (Oil Pipeline Companies) (2002).

[24] *See* General Instruction 1–6, Extraordinary, unusual or infrequent items, prior period adjustments, discontinued operations and accounting changes, paragraphs (e) and (g) and the instructions to account 697, Cumulative effect of changes in accounting principles. *See* 18 CFR part 352 (Oil Pipeline Companies) (2002).

must adjust the accrued depreciation in account 31, Accrued depreciation—carrier property, for the cumulative depreciation from the date incurred through the initial date of adoption of the final rule with the offsetting adjustment to account 697.

G. Proposed Revisions to Tariff Filing Requirements Under 18 CFR Part 346

63. The Commission's proposed rule will require oil pipeline companies to recognize for accounting purposes asset retirement obligations. The Commission is not requiring oil pipeline companies with stated rate tariffs to make any tariff filings with the Commission due to this rulemaking at this time. However, oil pipeline companies with formula rate tariffs must not include any cost components related to asset retirement obligations in their formula rate tariffs for automatic recovery in their billing determinations prior to obtaining Commission approval.

64. For the same reasons discussed above for public utilities, licensees and natural gas companies, the Commission proposes that to the extent, if any, a particular asset retirement cost should be allowed recovery through oil pipeline companies rates, it shall be addressed on a case by case basis in the individual rate change proposals filed by oil pipeline companies. The Commission proposes to add a new § 346.3 to cost-of-service filing requirements for oil pipelines. These new regulations require that oil pipelines who have recorded an asset retirement obligation on their books in accordance with this proposed rule must, as part of any initial rate filing or general rate change filing, provide a schedule identifying all cost components related to the asset retirement obligation that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. In addition, the proposed regulations require that all rate base items related to asset retirement obligations be removed from the rate base computation through an adjustment. Oil pipeline companies seeking recovery of an asset retirement obligation in rates must also provide a detailed study supporting the amounts proposed to be collected in rates. If the oil pipeline is not seeking recovery of the asset retirement obligation in rates, then it must remove all asset retirement obligation related cost components from its cost of service.

65. The Commission is aware that a number of oil pipelines are currently collecting an allowance in jurisdictional rates to cover the future cost of retiring and removing facilities referred to as a dismantling, removal and restoration (DR&R) allowance. The Commission believes that these DR&R allowances do not necessarily reflect the existence of a legal obligation for the retirement of long-lived assets. Therefore, the Commission will require that DR&R allowances that are not established due to an asset retirement obligation be identified for rate making purposes separately from asset retirement obligation allowances.

V. Proposed Effective Date

66. The Commission proposes the rule for accounting and reporting purposes be effective January 1, 2003, for public utilities, licensees, natural gas companies and oil pipeline companies. This is the date jurisdictional entities that file FERC Forms 1, 1–F, 2, 2–A and 6, will record the transitional adjustment to recognize asset retirement obligations in their books and records.[25] The proposed reporting will be effective for the FERC Forms 1, 1–F, 2 and 2–A and 6 annual reports for the reporting year 2003.[26]

VI. Proposed Changes to the FERC Annual Report Forms

67. The proposed changes, if adopted, will require revising the existing schedules in the FERC Forms 1, 1–F, 2, 2–A, and 6 filed with the Commission. A table summarizing the changes to the various schedules is shown in Appendix A. As a result of the Commission proposed accounting changes referred to above for public utilities, licensees, natural gas and oil pipeline companies, the Commission proposes to report in the Forms 1, 1–F, 2, 2–A and 6 the new noncurrent liability account for asset retirement obligations in the comparative balance sheet schedules, the new depreciation expense accounts and new accretion expense accounts in the income statement schedules.

68. The Commission also proposes to report in the Forms 1, 1–F, 2, 2–A and 6 the new primary plant accounts for asset retirement costs for each function for electric and gas utility plant and oil pipeline carrier property. The Commission proposes to report in the Forms 1, 1–F, 2, 2–A and 6 the depreciation expense related to the asset retirement costs separately in the accumulated provision for depreciation schedules for electric and gas utility plant and the accrued depreciation schedules for carrier property. In addition, the Commission proposes for public utilities and licensees to change the plant statistical schedules to include the asset retirement costs related to electric utility plant.

69. The Commission is proposing to revise the reporting requirements in the Forms 1, 1–F, 2, 2–A and 6 financial reports consistent with the changes in the proposed rule to promote consistent reporting practices for asset retirement obligations to the Commission by jurisdictional entities. The Commission believes that asset retirement obligations must be identified and reported in the Forms 1, 1–F, 2, 2–A and 6 separately in the financial statements and supporting schedules because of the long-term nature of the obligations to retire long-lived assets. Furthermore, the Commission believes separate reporting of the accounts for asset retirement obligations on the balance sheet, income statement and certain other schedules in the Forms 1, 1–F, 2, 2–A and 6 provides more transparent reporting of the asset retirement obligations to meet the Commission's information needs.

70. The reporting would include certain disclosure for asset retirement obligations in the ''Notes to Financial Statements'' in the FERC Forms 1, 1–F, 2, 2–A and 6.[27] The Commission expects that financial statement disclosures provided by jurisdictional entities in the FERC Forms 1, 1–F, 2, 2–A and 6 must be no less than that provided in their general purpose financial statements that are provided to shareholders and the Securities and Exchange Commission.

71. The Commission proposes that jurisdictional entities that report a liability for asset retirement obligations must disclose the following: (1) A general description of the asset retirement obligations and the associated long-lived assets; (2) the fair value of assets that legally are restricted for purposes of settling the asset retirement obligations; (3) a reconciliation of the beginning and ending aggregate carrying amount of asset retirement obligations showing separately the changes attributable to (i)

[25] On February 20, 2002, the Commission's Chief Accountant issued interim guidance stating that jurisdictional entities may not early adopt this accounting standard for financial accounting and reporting to the Commission pending the Commission action on this matter. *See* All Jurisdictional Public Utilities, Licensees, Natural Gas Companies, and Oil Pipeline Companies, 98 FERC ¶ 62,222 (2002).

[26] The FERC Forms 1–F and 2–A and 6 annual reports for the year 2003 are due on or before March 31, 2004. The FERC Forms 1 and 2 annual reports for the year 2003 are due on or before April 30, 2004.

[27] *See* the instructions to the Notes to Financial Statements schedule for FERC Forms 1, 1–F, 2, 2–A and 6 that requires respondents to report important notes and information related to the financial statements.

liabilities incurred in the current period, (ii) liabilities settled in the current period, (iii) accretion expense, and (iv) revisions in estimated cash flows, whenever there is a significant change in one or more of those four components during the reporting period. If the fair value of an asset retirement obligation cannot be reasonably estimated, that fact and the reasons therefore must be disclosed.

72. The Commission proposes jurisdictional entities must report on a separate line in the Statement of Cash Flows in FERC Forms 1, 1–F, 2, 2–A and 6 under the ''Operating Activities'' classification any cash payments made to settle asset retirement obligations.[28] Although, the transition adjustment requirements as discussed above does not permit jurisdictional entities to go back and restate prior year balances in the initial year of adoption of this rule, the Commission proposes jurisdictional entities must provide pro forma disclosure of the effect of adopting this change in accounting for asset retirement obligations in the Notes to the Financial Statements in the FERC Forms 1, 1–F, 2, 2–A and 6. The pro forma disclosure must disclose in a footnote in the Notes to the Financial Statements of the FERC Annual Reports what the asset retirement obligation would have been at the beginning of the earliest year presented in the Balance Sheet and Income Statement, and at the end of the year of each year presented, as if this rule had been applied during those periods. This is the same disclosure requirement that jurisdictional entities will have to include in their general purpose financial statements that are provided to shareholders and the Securities and Exchange Commission.

73. The Commission concludes that the above reporting requirements would not be a significant reporting burden since the information would be captured in jurisdictional entities accounting systems for internal and external reporting as needed.

VII. Regulatory Flexibility Act Statement

74. The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[29] The Commission is not required to make such analyses if a rule would not have such an effect.

75. The Commission does not believe that this proposed rule would have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of a small entity.[30] Further, the Commission concludes that this reporting would not be a significant burden because the information jurisdictional entities will be required to report to the Commission specifically focuses on the activities of the jurisdictional entities that will be captured in their accounting systems and generally be reported to their shareholders and others at a company, or at a consolidated business level. Therefore, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

76. However, if the reporting requirements represent an undue burden on small businesses, the entity affected may seek a waiver of the disclosure requirements from the Commission.

VIII. Environmental Impact Statement

77. Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[31] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or does not substantially change the effect of legislation or regulation being amended,[32] and also for information gathering, analysis, and dissemination.[33] The proposed rule updates the parts 35, 101, 154, 201, 346 and 352 of the Commission's regulations, and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. In addition, the Final Rule involves information gathering, analysis and dissemination. Therefore, this Final Rule falls within categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.

IX. Information Collection Statement and Public Reporting Burden

78. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3707(d) of the Paperwork Reduction Act of 1995.[34] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[35] The Commission identifies the information provided for under this rule as FERC Forms 1, 1–F, 2, 2–A and 6.

79. Comments are solicited on the need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimates are for complying with this proposed rule as follows:

Estimated Annual Burden:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC Form 1	216	216	17	3,672
FERC Form 1–F	26	26	8	208
FERC Form 2	57	57	13	741
FERC Form 2–A	53	53	8	424
FERC Form 6	159	159	10	1,590
Totals	511	511	.....	6,635

[28] *See* FASB's Emerging Issues Task Force (EITF) No. 02–6, Classification in the Statement of Cash Flows of Payments Made to Settle an Asset Retirement Obligation within the Scope of FASB Statement No. 143, issued in March 2002. The accounting publication may be obtained from FASB at *http://accounting.rutgers.edu/raw/fasb/*.

[29] 5 U.S.C. 601–612.

[30] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act,. 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

[31] Regulations Implementing National Environmental Policy Act, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[32] 18 CFR 380.4(a)(2)(ii).

[33] 18 CFR 380.4(a)(5).

[34] 44 U.S.C. 3507(d).

[35] 5 CFR 1320.11.

80. In addition, the Commission will address changes to tariffs on a case by case basis, it has not provided estimates for the number of entities that will make filings under FERC–516, FERC–545 or FERC–550.[36] However, the Commission will entertain comments on what resources and time will be placed on jurisdictional entities in order to make the appropriate filings with the Commission.

81. Total Annual Hours for Collection (reporting + recordkeeping, if appropriate) = 6,635 hours. The total hours associated with this proposed rule is equal to 6,635 hours. It should be noted that burden if the proposed rule if adopted, applies only for jurisdictional entities to comply with the Commission's Uniform Systems of Accounts, Annual Reports, and Rate Schedule Filings. Jurisdictional entities must maintain much of this information in order to implement the accounting for asset retirement obligations for reporting under generally accepted accounting principles. The proposed rule will eliminate the need by jurisdictional entities to maintain duplicate sets of books.

82. *Information Collection Costs:* The Commission seeks comments on the cost to comply with these requirements. It has projected the average annualized cost of all respondents to be: Annualized Capital Startup Costs: 6,635 hours ÷ 2080 × $117,041 = $373,350. This is a one-time cost for the initial implementation of the proposed schedules.

83. Annualized Costs (Operations & Maintenance)—If adopted, costs for performing the proposed schedules will be rolled into the total costs for completing the Commission's annual financial reports.

84. Total Annualized costs—$373,350.

85. OMB's regulations require it to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.[37]

86. *Title:* FERC Form 1, Annual Report of Major Electric Utilities, Licensees, and Others; FERC Form 1–F, Annual Report for Non-Major Public Utilities and Licensees; FERC Form 2, Annual Report for Major Natural Gas Companies; FERC Form 2–A, Annual Report for Nonmajor natural gas companies; FERC Form 6, Annual Report of Oil Pipeline Companies.

87. *Action:* Proposed Data Collections.

88. *OMB Control Nos.* 1902–0021; 1902–0029; 1902–0028; 1902–0030; and 1902–0022.

89. The applicant will not be penalized for failure to respond to these collections of information unless the collection of information displays a valid OMB control number or the Commission has provided justification as to why the control number should not be displayed.

90. *Respondents:* Businesses or other for profit.

91. *Frequency of Responses:* Annually.

92. *Necessity of the Information:* The proposed rule would revise the Commission's regulations to specifically address the proper accounting and reporting for asset retirement obligations. This requires the reporting of obligations associated with the retirement of tangible long-lived assets and their associated retirement costs. The addition of these new accounts and their corresponding general instructions are intended to provide accounting standards for recognition and measurement of liabilities for asset retirement obligations and associated asset retirement costs in reports to the Commission. The addition of these new accounts and related general instructions is intended to improve the visibility, completeness and consistency of accounting practices for asset retirement obligations. Without specific instructions and accounts for recording and reporting the above transactions and events, inconsistent and incomplete accounting will result.

93. *Internal Review:* The Commission has reviewed the requirements pertaining to the Uniform Systems of Accounts and to the financial reports it prescribes and has determined the proposed revisions are necessary because the Commission needs to establish uniform accounting and reporting requirements for asset retirement obligations. All of the companies regulated by the Commission are capital-intensive and therefore involve substantial risk. The reporting of this information ensures that regulated companies' balance sheets clearly reflect the economic realities of the retirement obligations associated with long-lived assets and review by the Commission provides both regulated companies and their customers with timely regulatory treatment.

94. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the electric, natural gas and oil pipeline industries. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

95. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [*Attention:* Michael Miller, Office of the Chief Information Officer, Phone (202) 502–8415, fax: (202) 208–2425, e-mail: *michael.miller@ferc.gov*]

96. For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [*Attention:* Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7856, fax: (202) 395–7285].

X. Public Comment Procedures

97. The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due within 45 days from publication in the **Federal Register**. Comments must refer to Docket No. RM02–7–000, and may be filed either in electronic or paper format. Those filing electronically do not need to make a paper filing.

98. Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Real Text Format, or ASCII format, as listed on the Commission's Web site at *http://ferc.gov,* under the e-Filing link. The e-Filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-Mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to the e-mail address.

99. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

100. All comments will be placed in the Commission's public files and will be available for inspection in the

[36] These information collection requirements are covered by OMB Control Nos. 1902–0096, 1902–0154 and 1902–0089.

[37] 5 CFR 1320.11

Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the FERRIS link.

XI. Document Availability

101. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m., to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

102. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number of this document, excluding the last three digits in the docket number field. User assistance is available for FERRIS and the FERC's Web site during normal business hours from our 103.Help Line at (202) 502–8222 (e-mail to *WebMaster@ferc.gov*) or the Public Reference at (202) 502–8371 Press 0, TTY (2020) 502–8659 (e-mail to *public.reference.room@ferc.gov*).

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Electricity, Reporting and recordkeeping requirements.

18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 154

Alaska Natural gas, Natural gas companies, Pipelines, Rate schedules and tariffs, Reporting and recordkeeping requirements.

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 346

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 352

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 35, 101, 154, 201, 346 and 352, chapter I, title 18, Code of Federal Regulations, as follows.

Regulatory Text

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 35.18 is added to read as follows:

§ 35.18 Asset retirement obligations.

(a) A public utility that files a rate schedule under § 35.12 or § 35.13 and has recorded an asset retirement obligation on its books must provide a schedule, as part of the supporting work papers, identifying all cost components related to the asset retirement obligations that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. However, all cost components related to asset retirement obligations that would impact the calculation of rate base, such as electric plant and related accumulated depreciation and accumulated deferred income taxes, may not be reflected in rates and must be removed from the rate base calculation through a single adjustment.

(b) A public utility seeking to recover nonrate base costs related to asset retirement costs in rates must provide, with its filing under § 35.12 or § 35.13, a detailed study supporting the amounts proposed to be collected in rates.

(c) A public utility who has recorded asset retirement obligations on its books but is not seeking recovery of the asset retirement costs in rates, must remove all asset retirement obligations related cost components from the cost of service supporting its proposed rates.

* * * * *

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

3. The authority citation for part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–7651o.

4. In Definitions, Definition 10 is revised to read as follows:

Definitions

* * * * *

10. *Cost of removal* means the cost of demolishing, dismantling, tearing down or otherwise removing electric plant, including the cost of transportation and handling incidental thereto. It does not include the cost of removal activities associated with asset retirement obligations that are capitalized as part of the tangible long-lived assets that give rise to the obligation. (See General Instruction 25).

* * * * *

5. In General Instructions, Instruction 20, paragraphs C. and D. are redesignated as paragraphs D. and E. and new paragraph C. is added; and a new Instruction 25 is added to read as follows:

General Instructions

* * * * *

20. *Accounting for leases.*

* * * * *

C. The utility, as a lessee, shall recognize an asset retirement obligation (See General Instruction 25) arising from the plant under a capital lease unless the obligation is recorded as an asset and liability under a capital lease. The utility shall record the asset retirement cost by debiting account 101.1, Property under capital leases, or account 120.6, Nuclear fuel under capital leases, or account 121, Nonutility property, as appropriate, and crediting the liability for the asset retirement obligation in account 230, Asset retirement obligations. Asset retirement costs recorded in account 101.1, account 120.6, or account 121 shall be amortized by charging rent expense (See Operating Expense Instruction 3), or account 518, Nuclear fuel expense (Major only), or account 421, Miscellaneous nonoperating income, as appropriate, and crediting a separate subaccount of the account in which the asset retirement costs are recorded. Charges for the periodic accretion of the liability in account 230, Asset retirement obligations, shall be recorded by a charge to account 411.10, Accretion expense, for electric utility plant, and account 421, Miscellaneous nonoperating income, for nonutility plant and a credit to account 230, Asset retirement obligations.

* * * * *

25. *Accounting for asset retirement obligations.*

A. An *asset retirement obligation* represents a liability for the legal obligation associated with the retirement of a tangible long-lived asset that a company is required to settle as a result of an existing or enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel. An *asset retirement cost* represents the amount capitalized when the liability is recognized for the long-lived asset that gives rise to the legal obligation. The amount recognized for the liability and an associated asset retirement cost shall be stated at the fair value of the asset retirement obligation in the period in which the obligation is incurred.

B. The utility shall initially record a liability for an asset retirement obligation in account 230, Asset retirement obligations, and charge the associated asset retirement costs to electric utility plant (including accounts 101.1 and 120.6), and nonutility plant, as appropriate, related to the plant that gives rise to the legal obligation. The asset retirement cost shall be depreciated over the useful life of the related asset that gives rise to the obligations. For periods subsequent to the initial recording of the asset retirement obligation, a utility shall recognize the period to period changes of the asset retirement obligation that result from the passage of time due to the accretion of the liability and any subsequent measurement changes to the initial liability for the legal obligation recorded in account 230, Asset retirement obligations, as follows:

(1) The utility shall record the accretion of the liability by debiting account 411.10, Accretion expense, for electric utility plant, account 413, Expenses of electric plant leased to others, for electric plant leased to others, and account 421, Miscellaneous nonoperating income, for nonutility plant and crediting account 230, Asset retirement obligations; and

(2) The utility shall recognize any subsequent measurement changes of the liability initially recorded in account 230, Asset retirement obligations, for each specific asset retirement obligation as an adjustment of that liability in account 230 with the corresponding adjustment to electric utility plant, electric plant leased to others, and nonutility plant, as appropriate. The utility shall on a timely basis monitor any measurement changes of the asset retirement obligations.

C. Gains or losses resulting from the settlement of asset retirement obligations associated with utility plant resulting from the difference between the amount of the liability for the asset retirement obligation included in account 230, Asset retirement obligations, and the actual amount paid to settle the obligation shall be accounted for as follows:

(1) Gains shall be credited to account 411.6, Gains from disposition of utility plant, and;

(2) Losses shall be charged to account 411.7, Losses from disposition of utility plant.

D. Gains or losses on the settlement of asset retirement obligations associated with nonutility plant resulting from the difference between the amount of the liability for the asset retirement obligation in account 230, Asset retirement obligations, and the amount paid to settle the obligation, shall be accounted for as follows:

(1) Gains shall be credited to account 421, Miscellaneous nonoperating income, and;

(2) Losses shall be charged to account 426.5, Other deductions.

E. Separate subsidiary records shall be maintained for each asset retirement obligation showing the initial liability and associated asset retirement cost, any incremental amounts of the liability incurred in subsequent reporting periods for additional layers of the original liability and related asset retirement cost, the accretion of the liability, the subsequent measurement changes to the asset retirement obligation, the depreciation and amortization of the asset retirement costs and related accumulated depreciation, and the settlement date and actual amount paid to settle the obligation. For purposes of analyses a utility shall maintain supporting documentation so as to be able to furnish accurately and expeditiously with respect to each asset retirement obligation the full details of the identity and nature of the legal obligation, the year incurred, the identity of the plant giving rise to the obligation, the full particulars relating of each component and supporting computations related to the measurement of the asset retirement obligation.

* * * * *

6. In Electric Plant Instructions, paragraph 3.A.(17)(a) the (W) element is revised; and a new paragraph 3.A.(21) is added to read as follows:

Electric Plant Instructions

* * * * *

3. *Components of construction cost.*

A. * * *

(17) * * *

(a) * * *

(W) = Average balance in construction work in progress plus nuclear fuel in process of refinement, conversion, enrichment and fabrication, less asset retirement costs (See General Instruction 25) related to plant under construction.

* * * * *

(21) *Asset retirement costs.* The costs recognized as a result of asset retirement obligations incurred during the construction and testing of utility plant shall constitute a component of construction costs.

* * * * *

7. Balance Sheet Accounts is amended as follows:

(a) Account 101.1 is amended by adding a sentence to the end of paragraph C.;

(b) Account 103 paragraph C. is revised;

(c) Account 108 paragraph A.(2) through A.(7) are redesignated as paragraphs A.(3) through A.(8) and a new paragraph A.(2) is added;

(d) Account 110 paragraph A.(2) through A.(4) are redesignated as paragraphs A.(3) through A.(5) and a new paragraph A.(2) is added;

(e) Account 121, paragraph A. is amended by adding a sentence to the end of the paragraph; and

(f) Account 230 is added.

The revision and additions read as follows:

Balance Sheet Accounts

* * * * *

101.1 Property under capital leases.

* * * * *

C. * * * Records shall also be maintained for plant under a lease, to identify the asset retirement obligation and cost originally recognized for each lease and the periodic charges and credits made to the asset retirement obligations and asset retirement costs.

* * * * *

103 Experimental electric plant unclassified (Major only).

* * * * *

C. The depreciation on plant in this account shall be charged to account 403, Depreciation expense, and account 403.1, Depreciation expense for asset retirement costs, as appropriate, and credited to account 108, Accumulated provision for depreciation of electric utility plant (Major only). The amounts herein shall be depreciated over a period which corresponds to the estimated useful life of the relevant project considering the characteristics involved. However, when projects are transferred to account 101, Electric plant in service, a new depreciation rate based on the remaining service life and

undepreciated amounts, will be established.

* * * * *

108 Accumulated provision for depreciation of electric utility plant (Major only).

A. * * *

(2) Amounts charged to account 403.1, Depreciation expense for asset retirement costs, for current depreciation expense related to asset retirement costs in electric plant in service in a separate subaccount.

* * * * *

110 Accumulated provision for depreciation and amortization of electric utility plant (Nonmajor only).

A. * * *

(2) Amounts charged to account 403.1, Depreciation expense for asset retirement costs, in electric utility plant in service in a separate subaccount.

* * * * *

121 Nonutility property.

A. * * * This account shall also include, where applicable, amounts recorded for asset retirement costs associated with nonutility plant.

* * * * *

230 Asset retirement obligations.

A. This account shall include the amount of liabilities for the recognition of asset retirement obligations related to electric utility plant and nonutility plant that gives rise to the obligations. This account shall be credited for the amount of the liabilities for asset retirement obligations with amounts charged to the appropriate electric utility plant accounts or nonutility plant account to record the related asset retirement costs.

B. The utility shall charge the accretion expense to account 411.10, Accretion expense, for electric utility plant, account 413, Expenses of electric plant leased to others, for electric plant leased to others, or account 421, Miscellaneous nonoperating income, for nonutility plant, as appropriate, and credit account 230, Asset retirement obligations.

C. This account shall be debited with amounts paid to settle the asset retirement obligations recorded herein.

D. The utility shall clear from this account any gains or losses resulting from the settlement of asset retirement obligations in accordance with the instructions prescribed in General Instruction 25.

* * * * *

8. In Electric Plant Accounts, new primary plant accounts, 317, 326, 337, 347, 359.1, 374, and 399.1 are added to read as follows:

Electric Plant Accounts

* * * * *

317 Asset retirement costs for steam production plant.

This account shall include asset retirement costs on plant included in the steam production function.

* * * * *

326 Asset retirement costs for nuclear production plant (Major only).

This account shall include asset retirement costs on plant included in the nuclear production function.

* * * * *

337 Asset retirement costs for hydraulic production plant.

This account shall include asset retirement costs on plant included in the hydraulic production function.

* * * * *

347 Asset retirement costs for other production plant.

This account shall include asset retirement costs on plant included in the other production function.

* * * * *

359.1 Asset retirement costs for transmission plant.

This account shall include asset retirement costs on plant included in the transmission plant function.

* * * * *

374 Asset retirement costs for distribution plant.

This account shall include asset retirement costs on plant included in the distribution plant function.

* * * * *

399.1 Asset retirement costs for general plant.

This account shall include asset retirement costs on plant included in the general plant function.

* * * * *

9. Amend Income Accounts as follows:

a. Account 403.1 is added,

b. Accounts 411.6 and 411.7 are amended by designating the current paragraph as A., and adding a new paragraph B.,

c. Account 411.10 is added,

d. In account 421, paragraphs 4. through 6. are added, and

e. In account 426.5 paragraph 6 is added.

The additions read as follows:

Income Accounts

* * * * *

403.1 Depreciation expense for asset retirement costs.

This account shall include the depreciation expense for asset retirement costs included in electric utility plant in service.

* * * * *

411.6 *Gains from disposition of utility property.*

A. * * *

B. The utility shall record in this account gains resulting from the settlement of asset retirement obligations related to utility plant in accordance with the accounting prescribed in General Instruction 25.

* * * * *

411.7 *Losses from disposition of utility property.*

A. * * *

B. The utility shall record in this account losses resulting from the settlement of asset retirement obligations related to utility plant in accordance with the accounting prescribed in General Instruction 25.

* * * * *

411.10 *Accretion expense.*

This account shall be charged for accretion expense on the liabilities associated with asset retirement obligations included in account 230, Asset retirement obligations, related to electric utility plant.

* * * * *

421 *Miscellaneous nonoperating income.*

* * * * *

4. This account shall include the accretion expense on the liability for an asset retirement obligation included in account 230, Asset retirement obligations, related to nonutility plant.

5. This account shall include the depreciation expense for asset retirement costs related to nonutility plant.

6. The utility shall record in this account gains resulting from the settlement of asset retirement obligations related to nonutility plant in accordance with the accounting prescribed in General Instruction 25.

* * * * *

426.5 *Other deductions.*

* * * * *

6. The utility shall record in this account losses resulting from the settlement of asset retirement obligations related to nonutility plant in accordance with the accounting prescribed in General Instruction 25.

* * * * *

PART 154—RATE SCHEDULES AND TARIFFS

10. The authority citation for part 154 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

11. In § 154.312 paragraph (d), introductory text, is amended by removing the sentence ''Any authorized negative salvage must be maintained in a separate subaccount of account 108,''

and adding in its place the following sentence to read as follows:

§ 154.312 Composition of Statements.

(d) * * * Any authorized negative salvage must be maintained in a separate subaccount of account 108, and shall not include any amounts related to asset retirement obligations.* * *

* * * * *

12. Section 154.315 is added to read as follows:

§ 154.315 Asset retirement obligations.

(a) A natural gas company that files a tariff change under this part and has recorded an asset retirement obligation on its books must provide a schedule, as part of the supporting workpapers, identifying all cost components related to the asset retirement obligations that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. However, all cost components related to asset retirement obligations that would impact the calculation of rate base, such as gas plant and related accumulated depreciation and accumulated deferred income taxes, may not be reflected in rates and must be removed from the rate base calculation through a single adjustment.

(b) A natural gas company seeking to recover nonrate base costs related to asset retirement obligations in rates must provide, with its filing under § 154.312 or § 154.313, a detailed study supporting the amounts proposed to be collected in rates.

(c) A natural gas company who has recorded asset retirement obligations on its books but is not seeking recovery of the asset retirement costs in rates, must remove all asset retirement obligations related cost components from the cost of service supporting its proposed rates.

PART 201— UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

13. The authority citation for part 201 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

14. In Definitions, Definition 10 is revised to read as follows:

Definitions

* * * * *

10. *Cost of removal* means the cost of demolishing, dismantling, tearing down or otherwise removing gas plant, including the cost of transportation and handling incidental thereto. It does not include the cost of removal activities associated with asset retirement obligations that are capitalized as part of the tangible long-lived assets that give rise to the obligation. (See General Instruction 24).

* * * * *

15. In General Instructions, Instruction 20 paragraphs C. and D. are redesignated as paragraphs D. and E. and a new paragraph C. is added; and a new Instruction 24 is added to read as follows:

General Instructions

* * * * *

20. *Accounting for leases.*

* * * * *

C. The utility, as a lessee, shall recognize an asset retirement obligation (*See* General Instruction 24) arising from the plant under a capital lease unless the obligation is recorded as an asset and liability under a capital lease. The utility shall record the asset retirement cost by debiting account 101.1, Property under capital leases, or account 121, Nonutility property, as appropriate, and crediting the liability for the asset retirement obligation in account 230, Asset retirement obligations. Asset retirement costs recorded in account 101.1 or account 121 shall be amortized by charging rent expense (See Operating Expense Instruction 3) or account 421, Miscellaneous nonoperating income, as appropriate, and crediting a separate subaccount of the account in which the asset retirement costs are recorded. Charges for the periodic accretion of the liability in account 230, Asset retirement obligations, shall be recorded by a charge to account 411.10, Accretion expense, for gas utility plant, and account 421, Miscellaneous nonoperating income, for nonutility plant and a credit to account 230, Asset retirement obligations.

* * * * *

24. *Accounting for asset retirement obligations.*

A. *An asset retirement obligation* represents a liability for the legal obligation associated with the retirement of a tangible long-lived asset that a utility is required to settle as a result of an existing or enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel. An *asset retirement cost* represents the amount capitalized when the liability is recognized for the long-lived asset that gives rise to the legal obligation. The amount recognized for the liability and an associated asset retirement cost shall be stated at the fair value of the asset retirement obligation in the period in which the obligation is incurred.

B. The utility shall initially record a liability for an asset retirement obligation in account 230, Asset retirement obligations, and charge the associated asset retirement costs to gas utility plant and nonutility plant, as appropriate, related to the plant that gives rise to the legal obligation. The asset retirement cost shall be depreciated over the useful life of the related asset that gives rise to the obligations. For periods subsequent to the initial recording of the asset retirement obligation, a utility shall recognize the period to period changes of the asset retirement obligation that result from the passage of time due to the accretion of the liability and any subsequent measurement changes to the initial liability for the legal obligation recorded in account 230, Asset retirement obligations, as follows:

(1) The utility shall record the accretion of the liability by debiting account 411.10, Accretion expense, for gas utility plant, account 413, Expenses of gas plant leased to others, for gas plants leased to others, and account 421, Miscellaneous nonoperating income, for nonutility plant and crediting account 230, Asset retirement obligations; and

(2) The utility shall recognize any subsequent measurement changes of the liability initially recorded in account 230, Asset retirement obligations, for each specific asset retirement obligation as an adjustment of that liability in account 230 with the corresponding adjustment to gas utility plant, gas plant leased to others, and nonutility plant, as appropriate. The utility shall on a timely basis monitor any measurement changes of the asset retirement obligations.

C. Gains or losses resulting from the settlement of asset retirement obligations associated with utility plant resulting from the difference between the amount of the liability for the asset retirement obligation included in account 230, Asset retirement obligations, and the actual amount paid to settle the obligation shall be accounted for as follows:

(1) Gains shall be credited to account 411.6, Gains from disposition of utility plant, and;

(2) Losses shall be charged to account 411.7, Losses from disposition of utility plant.

D. Gains or losses on the settlement of the asset retirement obligations associated with nonutility plant resulting from the difference between the amount of the liability for the asset retirement obligation in account 230, Asset retirement obligations, and the

amount paid to settle the obligation, shall be accounted for as follows:

(1) Gains shall be credited to account 421, Miscellaneous nonoperating income, and;

(2) Losses shall be charged to account 426.5, Other deductions.

E. Separate subsidiary records shall be maintained for each asset retirement obligation showing the initial liability and associated asset retirement cost, any incremental amounts of the liability incurred in subsequent reporting periods for additional layers of the original liability and related asset retirement cost, the accretion of the liability, the subsequent measurement changes to the asset retirement obligation, the depreciation and amortization of the asset retirement costs and related accumulated depreciation, and the settlement date and actual amount paid to settle the obligation. For purposes of analyses a utility shall maintain supporting documentation so as to be able to furnish accurately and expeditiously with respect to each asset retirement obligation the full details of the identity and nature of the legal obligation, the year incurred, the identity of the plant giving rise to the obligation, the full particulars relating of each component and supporting computations related to the measurement of the asset retirement obligation.

* * * * *

16. In Gas Plant Instructions, paragraph 3.A.(17)(a) the (W) element is revised; and new paragraph 3.A.(23) is added to read as follows:

Gas Plant Instructions

* * * * *

3. *Components of construction cost.*

A. * * *

(17) * * *

(a) * * *

(W) = Average balance in construction work in progress less asset retirement costs (See General Instruction 24) related to plant under construction.

* * * * *

(23) ''Asset retirement costs.'' The costs recognized as a result of asset retirement obligations incurred during the construction and testing of utility plant shall constitute a component of construction costs.

* * * * *

17. Balance Sheet Accounts are amended as follows:

(a) Account 101.1, is amended by adding a sentence to the end of paragraph C.;

(b) Account 103, paragraph C. is revised;

(c) Account 108, paragraphs A.(2) through A.(7) are redesignated as paragraphs A.(3) through A.(8) and a new paragraph A.(2) is added;

(d) Account 121, paragraph A. is amended by adding a sentence to the end of the paragraph; and

(f) Account 230 is added.

The additions and revisions read as follows:

Balance Sheet Accounts

* * * * *

101.1 Property under capital leases.

* * * * *

C. * * * Records shall also be maintained for plant under a lease, to identify the asset retirement obligation and cost originally recognized for each lease and the periodic charges and credits made to the asset retirement obligations and asset retirement costs.

* * * * *

103 Experimental gas plant unclassified.

* * * * *

C. The depreciation on plant in this account shall be charged to account 403, Depreciation expense, and account 403.1, Depreciation expense for asset retirement costs, as appropriate, and credited to account 108, Accumulated provision for depreciation of gas utility plant. The amounts herein shall be depreciated over a period which corresponds to the estimated useful life of the relevant project considering the characteristics involved. However, when projects are transferred to account 101, Gas plant in service, a new depreciation rate based on the remaining service life and undepreciated amounts, will be established.

* * * * *

108 Accumulated provision for depreciation of gas utility plant.

A. * * *

(2) Amounts charged to account 403.1, Depreciation expense for asset retirement costs, for current depreciation expense related to asset retirement costs in gas plant in service in a separate subaccount.

* * * * *

121 Nonutility property.

A. * * * This account shall also include, where applicable, amounts recorded for asset retirement costs associated with nonutility plant.

* * * * *

230 Asset retirement obligations

A. This account shall include the amount of liabilities for the recognition of asset retirement obligations related to gas utility plant and nonutility plant that gives rise to the obligations. This account shall be credited for the amount of the liabilities for asset retirement obligations with amounts charged to the appropriate gas utility plant accounts or nonutility plant accounts to record the related asset retirement costs.

B. This account shall also include the period to period changes for the accretion of the liabilities in account 230, Asset retirement obligations. The utility shall charge the accretion expense to account 411.10, Accretion expense, for gas utility plant, account 413, Expenses of gas plant leased to others, for gas plant leased to others, or account 421, Miscellaneous nonoperating income, for nonutility plant, as appropriate, and credit account 230, Asset retirement obligations.

C. This account shall be debited with amounts paid to settle the asset retirement obligations recorded herein.

D. The utility shall clear from this account any gains or losses resulting from the settlement of asset retirement obligations in accordance with the instructions prescribed in General Instruction 24.

* * * * *

18. In Gas Plant Accounts, new primary plant accounts, 321, 339, 348, 358, 363.6, 364.9, 372, 388, and 399.1 are added to read as follows:

Gas Plant Accounts

* * * * *

321 Asset retirement costs for manufactured gas production plant.

This account shall include asset retirement costs on plant included in the manufactured gas production plant function.

* * * * *

339 Asset retirement costs for natural gas production and gathering plant.

This account shall include asset retirement costs on plant included in the natural gas production and gathering plant function.

* * * * *

348 Asset retirement costs for products extraction plant.

This account shall include asset retirement costs on plant included in the products extraction plant function.

* * * * *

358 Asset retirement costs for underground storage plant.

This account shall include asset retirement costs on plant included in the underground storage plant function.

* * * * *

363.6 Asset retirement costs for other storage plant.

This account shall include asset retirement costs on plant included in the other storage plant function.

* * * * *

372 Asset retirement costs for transmission plant.

This account shall include asset retirement costs on plant included in the transmission plant function.

* * * * *

388 Asset retirement costs for distribution plant.

This account shall include asset retirement costs on plant included in the distribution plant function.

* * * * *

399.1 Asset retirement costs for general plant.

This account shall include asset retirement costs on plant included in the general plant function.

* * * * *

19. Income Accounts are amended as follows:

a. Account 403.1 is added,

b. Accounts 411.6 and 411.7 are amended by designating the current paragraph as A. and adding a new paragraph B.,

c. Account 411.10 is added,

d. In account 421, paragraphs 4. through 6. are added, and

e. In account 426.5 paragraph 6. is added.

The additions read as follows:

Income Accounts

* * * * *

403.1 Depreciation expense for asset retirement costs.

This account shall include the depreciation expense for asset retirement costs included in gas utility plant in service.

* * * * *

411.6 Gains from disposition of utility property.

A. * * *

B. The utility shall record in this account gains resulting from the settlement of asset retirement obligations related to utility plant in accordance with the accounting prescribed in General Instruction 24.

* * * * *

411.7 Losses from disposition of utility property.

A. * * *

B. The utility shall record in this account losses resulting from the settlement of asset retirement obligations related to utility plant in accordance with the accounting prescribed in General Instruction 24.

* * * * *

411.10 Accretion expense.

This account shall be charged for accretion expense on the liabilities associated with asset retirement obligations included in account 230, Asset retirement obligations, related to gas utility plant.

* * * * *

421 Miscellaneous nonoperating income.

* * * * *

4. This account shall include the accretion expense on the liability for an asset retirement obligation included in account 230, Asset retirement obligations, related to nonutility plant.

5. This account shall include the depreciation expense for asset retirement costs related to nonutility plant.

6. The utility shall record in this account gains resulting from the settlement of asset retirement obligations related to nonutility plant in accordance with the accounting prescribed in General Instruction 24.

* * * * *

426.5 Other deductions.

* * * * *

6. The utility shall record in this account losses resulting from the settlement of asset retirement obligations related to nonutility plant in accordance with the accounting prescribed in General Instruction 24.

* * * * *

PART 346—OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS

20. The authority citation for part 346 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

21. Section 346.3 is added to read as follows:

§ 346.3 Asset retirement obligations.

(a) A carrier that files material in support of initial rates or change in rates under § 346.2 and has recorded asset retirement obligations on its books must provide a schedule, as part of the supporting workpapers, identifying all cost components related to the asset retirement obligations that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. However, all cost components related to asset retirement obligations that would impact the calculation of rate base, such as carrier property and related accumulated depreciation and accumulated deferred income taxes, may not be reflected in rates and must be removed from the rate base calculation through a single adjustment.

(b) A carrier seeking to recover nonrate base costs related to asset retirement costs in rates must provide, with its filing under § 346.2 of this part, a detailed study supporting the amounts proposed to be collected in rates.

(c) A carrier who has recorded asset retirement obligations on its books but is not seeking recovery of the asset retirement costs in rates, must remove all asset retirement obligations related cost components from the cost of service supporting its proposed rates.

PART 352—UNIFORM SYSTEMS OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

22. The authority citation for part 352 continues to read as follows:

Authority: 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

23. In List of Instructions and Accounts, under Definitions, Definition 12 is revised to read as follows:

Definitions. * * *

12. *Cost of removal* means cost of demolishing, dismantling, tearing down, or otherwise removing property including costs of handling and transportation. It does not include the cost of removal activities associated with asset retirement obligations that are capitalized as part of the tangible long-lived assets that give rise to the obligation. (See General Instruction 1–19).

* * * * *

24. In General Instructions, paragraph 1–19 is added to read as follows:

General Instructions

* * * * *

1–19 *Accounting for asset retirement obligations.*

(a) An *asset retirement obligation* represents a liability for the legal obligation associated with the retirement of a tangible long-lived asset that a utility is required to settle as a result of an existing or enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel. An *asset retirement cost* represents the amount capitalized when the liability is recognized for the long-lived asset that gives rise to the legal obligation. The amount recognized for the liability and an associated asset retirement cost shall be stated at the fair value of the asset retirement obligation in the period in which the obligation is incurred.

(b) The carrier shall initially record a liability for an asset retirement obligation in account 67, Asset retirement obligations, and charge the associated asset retirement costs to account 30, Carrier property, and account 34, Noncarrier property, as appropriate, related to the property that gives rise to the legal obligation. The asset retirement cost shall be depreciated over the useful life of the related asset that gives rise to the obligations. For periods subsequent to the initial recording of the asset

retirement obligation, a carrier shall recognize the period to period changes of the asset retirement obligation that result from the passage of time due to the accretion of the liability and any subsequent measurement revisions to the initial liability for the legal obligation recorded in account 67, Asset retirement obligations, as follows:

(1) The carrier shall record the accretion of the liability by debiting account 591, Accretion expense, for carrier property, account 620, Income (net) from noncarrier property, for noncarrier property and crediting account 67, Asset retirement obligations; and

(2) The carrier shall recognize any subsequent measurement changes of the liability initially recorded in account 67, Asset retirement obligations, for each specific asset retirement obligation as an adjustment of that liability in account 67 with the corresponding adjustment to carrier property and noncarrier property accounts, as appropriate. The utility shall on a timely basis monitor any measurement changes of the asset retirement obligations.

(c) Gains or losses resulting from the final settlement of asset retirement obligations for carrier plant resulting from the difference between the amount of the liability for the asset retirement obligation in account 67, Asset retirement obligation, and the actual amount to settle the obligation, shall be recorded in account 592, Gains or losses on asset retirement obligations.

(d) Gains or losses resulting from the final settlement of asset retirement obligations for noncarrier plant resulting from the difference between the amount of the liability for the asset retirement obligation in account 67, Asset retirement obligation, and the actual amount to settle the obligation, shall be recorded in account 620, Income (net) from noncarrier property.

(e) Separate subsidiary records shall be maintained for each asset retirement obligation showing the initial liability and associated asset retirement cost, any incremental amounts of the liability incurred in subsequent reporting periods for additional layers of the original liability and related asset retirement cost, the accretion of the liability, the subsequent measurement changes to the asset retirement obligation, the depreciation and amortization of the asset retirement costs and related accumulated depreciation, and the settlement date and actual amount paid to settle the obligation. For purposes of analyses a carrier shall maintain supporting documentation so as to be able to furnish accurately and expeditiously with respect to each asset retirement obligation the full details of the identity and nature of the legal obligation, the year incurred, the identity of the plant giving rise to the obligation, the full particulars relating of each component and supporting computations related to the measurement of the asset retirement obligation.

* * * * *

25. In Instructions for Carrier Property Accounts, Instruction 3–3, paragraph (11)(iii) and paragraph (13) are added to read as follows:

Instructions for Carrier Property Accounts

* * * * *

3–3 *Cost of property constructed.*

* * *

(11) * * *

(iii) Interest during construction shall not be recognized on the asset retirement costs incurred during the construction of carrier and noncarrier property.

* * * * *

(13) Asset retirement costs that are recognized as a result of asset retirement obligations incurred during the construction shall be included in the cost of construction costs.

* * * * *

Balance Sheet Accounts

26. In Balance Sheet Accounts, account 34 is amended by adding a sentence to the end of paragraph and account 67 is added to read as follows:

* * * * *

34 * * * This account shall also include, amounts recorded for asset retirement costs associated with noncarrier property.

* * * * *

67 Asset retirement obligations.

A. This account shall include liabilities arising from the recognition of asset retirement obligations. The carrier shall credit account 67, Asset retirement obligations, for the liabilities for asset retirement obligations and charge the appropriate carrier property accounts or noncarrier property accounts to record the related asset retirement costs.

B. This account shall also include the period to period changes for the accretion of the liabilities in account 67, Asset retirement obligations. The carrier shall charge the accretion expense to account 591, Accretion expense, for carrier property, and account 620, Income (net) from noncarrier property, for noncarrier property, as appropriate, and credit account 67, Asset retirement obligations.

C. This account shall be debited with amounts paid to settle the asset retirement obligations recorded herein.

D. The utility shall clear from this account any gains or losses resulting from the settlement of asset retirement obligations in accordance with the instructions prescribed in General Instruction 1–19.

* * * * *

27. In Carrier Property Accounts, accounts 117, 167, 186.1 are added to read as follows:

Carrier Property Accounts

* * * * *

117, 167, 186.1 Asset retirement costs.

This account shall include asset retirement costs on plant included in carrier property.

* * * * *

28. In Operating Expenses, accounts 541, 591 and 592 are added to read as follows:

Operating Expenses

* * * * *

541 Depreciation expense for asset retirement costs.

This account shall include charges for the depreciation of asset retirement costs related to transportation property.

* * * * *

591 Accretion expense.

This account shall be charged for accretion expense on the liabilities associated with asset retirement obligations included in account 67, Asset retirement obligations. The carrier shall record in this account the settlement amounts for asset retirement obligations related to carrier property in accordance with the accounting prescribed in General Instruction 1–19.

592 Gains or losses on asset retirement obligations.

The carrier shall record in this account gains or losses resulting from the settlement amounts for asset retirement obligations related to carrier property plant. (See General Instruction 1–19).

* * * * *

Note: Appendix A will not be published in the Code of Federal Regulations.

Appendix A—Summary of Proposed Changes to Schedules for Forms 1, 1–F, 2, 2–A and 6

	Schedule title	Forms 1 and 1–F public utilities and licensees	Forms 2 and 2A natural gas companies	Form 6 oil pipeline companies
1	List of Schedules	Revise to show schedule changes.	Same as Public Utilities and Licensees.	Same as Public Utilities and Licensees.
2	Comparative Balance Sheet	Add new account 230 to report asset retirement obligations.	Same as Public Utilities and Licensees.	Add account 67 to report asset retirement obligations.
3	Statement of Income for the Year.	Add new accounts 403.1, to report depreciation expense and 411.10, to report accretion expense.	Same as Public Utilities and Licensees.	Add accounts 541, to report depreciation expense, 591, to report accretion expense, and 592, to report gains or losses on asset retirement obligations.
4	Plant in Service	Add new Instruction 4. For revisions to the amount of initial asset retirement costs capitalized, included by primary plant account, increases in column (c) additions and reductions in column (e) adjustments.	Same as Public Utilities and Licensees.	N/A.
		Add new primary asset retirement accounts, 317, 326, 337, 347, 359.1, 374 and 399.1, for each plant function.	Add new primary asset retirement accounts, 339, 348, 358, 363.6, 364.9, 372, 388, 399.1, for each plant function.	N/A.
5	Undivided Joint Interest Property	N/A	N/A	Add new primary asset retirement accounts, 117, 167, and 186.1, for each carrier property account function.
6	Accumulated Provisions for Depreciation of Utility Plant.	Added lines to report ''403.1 Depreciation Expense for Asset Retirement Costs'' and ''Book Cost of Asset Retirement Costs Required''.	Same as Public Utilities and Licensees.	N/A.
7	Accrued Depreciation—Carrier Property.	N/A	N/A	Add new primary asset retirement accounts, 117, 167, and 186.1, for each carrier property account function and revise column (c) to read Debits to Accounts 540 and 541 and US of A (in dollars).
8	Accrued Depreciation—Undivided Joint Interest Property.	N/A	N/A	Same as above for Accured Depreciation—Carrier Property.
9	Depreciation and Amortization of Plant (Except Amortization of Acquisition Adjustments).	Add new Column (c), Depreciation Expense for Asset Retirement Costs (403.1).	Same as Public Utilities and Licensees. Form 2–A N/A	N/A.
10	Amortization Base and Reserve	N/A	N/A	Revise header over columns (b), (c), (d) and (e) to read (Base 540 and 541).
11	Steam-Electric Generating Plant Statistics (Large Plants).	Form 1—Revise to report Asset Retirement Costs. Form 1–F N/A	N/A	N/A.
12	Hydroelectric Generating Plant Statistics (Large Plants).	Form 1—Revise to report Asset Retirement Costs. Form 1–F N/A	N/A	N/A.
13	Pumped Storage Generating Plant Statistics (Large Plants).	Form 1—Revise to report Asset Retirement Costs. Form 1–F N/A	N/A	N/A.
14	Generating Plant Statistics (Small Plants) (Continued).	Form 1—Revise Column (g), to read ''Plant Cost (Including Asset Retirement Costs) Per MW Installed Capacity''. Form 1–F N/A	N/A	N/A.
15	Transmission Lines Added During the Year.	Form 1—Add column (o) ''Asset Retirement Costs'' to report asset retirements costs as part of line cost. Form 1–F N/A	N/A	N/A.

BILLING CODE 6717–01–P

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -1-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

LIST OF SCHEDULES (Electric Utility)

Enter in column (d) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none," "not applicable," or "NA".

Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS			
General Information	101	Ed. 12-87	
Control Over Respondent	102	Ed. 12-96	
Corporations Controlled by Respondent	103	Ed. 12-96	
Officers	104	Ed. 12-96	
Directors	105	Ed. 12-95	
Security Holders and Voting Powers	106-107	Ed. 12-96	
Important Changes During the Year	108-109	Ed. 12-96	
Comparative Balance Sheet	110-113	Rev. 12-02	
Statement of Income for the Year	114-117	Rev. 12-02	
Statement of Retained Earnings for the Year	118-119	Ed. 12-96	
Statement of Cash Flows	120-121	Ed. 12-96	
Statement of Accumulated Comprehensive Income and Hedging Activities	122 (a) (b)	New 12-02	
Notes to Financial Statements	122-123	Ed. 12-96	
BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debits)			
Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization, and Depletion	200-201	Ed. 12-89	
Nuclear Fuel Materials	202-203	Ed. 12-89	
Electric Plant in Service	204-207	Rev. 12-02	
Electric Plant Leased to Others	213	Rev. 12-95	
Electric Plant Held for Future Use	214	Ed. 12-89	
Construction work in Progress -- Electric	216	Ed. 12-87	
Construction Overheads -- Electric	217	Ed. 12-89	
General Description of Construction Overhead Procedure	218	Ed. 12-88	
Accumulated Provision for Depreciation of Electric Utility Plant.	219	Ed. 12-02	
Nonutility Property	221	Rev. 12-95	
investment in Subsidiary Companies	224-225	Ed. 12-89	
Materials and Supplies	227	Ed. 12-87	
Allowances	228-229	Ed. 12-89	
Extraordinary Property Losses	230	Ed. 12-88	
Unrecovered Plant and Regulatory Study Costs	230	Ed. 12-88	
Other Regulatory Assets	232	Ed. 12-95	
Miscellaneous Deferred Debits	233	Ed. 12-94	
Accumulated Deferred Income Taxes (Account 190)	234	Ed. 12-88	
BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)			
Capital Stock	250-251	Ed. 12-91	
Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock, and installments Received on Capital Stock	252	Rev. 12-95	
Other Paid-in Capital	253	Ed. 12-87	
Discount on Capital Stock	254	Ed. 12-87	
Capital Stock Expense	254	Ed. 12-86	
Long-Term Debt	256-257	Ed. 12-96	

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -2

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

LIST OF SCHEDULES (Electric Utility) (Continued)

Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits) (Continued)			
Reconciliation of Reported Net Income with for Federal Income Taxes	261	Ed. 12-96	
Taxes Accrued, Prepaid and Charged During Year	262 - 263	Ed. 12-96	
Accumulated Deferred Investment Tax Credits	266 - 267	Ed. 12-89	
Other Deferred Credits	269	Ed. 12-88	
Accumulated Deferred Income Taxes -- Accelerated Amortization Property	272 - 273	Ed. 12-96	
Accumulated Deferred Income Taxes -- Other Property	274 - 275	Ed. 12-96	
Accumulated Deferred Income Taxes Other	276 - 277	Ed. 12-96	
Other Regulatory Liabilities	278	Ed. 12-94	
INCOME ACCOUNT SUPPORTING SCHEDULES			
Electric Operating Revenues	300 - 301	Ed. 12-96	
Sales of Electricity by Rate Schedules	304	Ed. 12-95	
Sales of Resale	310 - 311	Ed. 12-88	
Electric Operation and Maintenance Expenses	320 - 323	Ed. 12-95	
Number of Electric Department Employees	323	Ed. 12-93	
Purchased Power	326 - 327	Ed. 12-95	
Transmission of Electricity for Others	328 - 330	Ed. 12-90	
Transmission of Electricity by Others	332	Ed. 12-90	
Miscellaneous General Expenses -- Electric	335	Ed. 12-94	
Depreciation and Amortization of Electric-- Plant	336 - 337	Rev. 12-02	
Particulars Concerning Certain Income Deduction and Interest Charges Account	340	Ed. 12 - 87	
COMMON SECTION			
Regulatory Commission Expenses	350 - 351	Ed. 12-96	
Research, Development and Demonstration Activities	352 - 353	Ed. 12-87	
Distribution of Salaries and Wages	354 - 355	Ed. 12-88	
Common Utility Plant and Expenses	356	Ed. 12-87	
ELECTRIC PLANT STATISTICAL DATA			
Electric Energy Account	401	Rev. 12-90	
Monthly Peaks and Output	401	Rev. 12-90	
Steam-Electric Generating Plant Statistics (Large Plants)	402 - 403	Rev. 12-02	
Hydroelectric Generating Plant Statistics (large Plants)	406 - 407	Ed. 12-02	
Pumped Storage Generating Plant Statistics (Large Plants)	408 - 409	Ed. 12-02	
Generating Plant Statistics (Small Plants)	410 - 411	Ed. 12-02	

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

LIST OF SCHEDULES (Electric Utility) (Continued)

Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
ELECTRIC PLANT STATISTICAL DATA (Continued)			
Transmission Lines Statistics	422-423	Ed. 12-87	
Transmission Lines Added During Year	424-425	Ed. 12-02	
Substations	426-427	Ed. 12-96	
Electric Distribution Meters and Line Transformers	429	Ed. 12-88	
Environmental protection Facilities	430	Ed. 12-88	
Environmental Protection Expenses	431	Ed. 12-88	
Footnote Data	450	Ed. 12-87	
Stockholders' Reports Check appropriate box:			
[ ] Four copies will be submitted.			
[ ] No annual report to stockholders is prepared.			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No	Title of Account (a)	Ref. Page No. (b)	Balance at Beginning of year (c)	Balance at End of Year (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid in Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	(Less) Discount on Capital Stock (213)	254		
10	(Less) Capital Stock expense (214)	254		
11	Retained Earnings (215, 215.1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216.1)	118-119		
13	(Less) Reacquired Capital Stock (217)	250-251		
14	Accumulated Other Comprehensive Income (219)	122 (a) (b)		
15	TOTAL Proprietary Capital (Enter Total of Lines 2 thru 14)	-		
16	LONG-TERM DEBT			
17	Bonds (221)	256-257		
18	(Less) Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	-		
22	(Less) Unamortized Discount on Long-Term Debt-Debit (226)	-		
23	TOTAL Long-Term Debt (Enter Total of Lines 16 thru 21)	-		
24	OTHER NONCURRENT LIABILITIES			
25	Obligations Under Capital Leases-Noncurrent (227)	-		
26	Accumulated Provision for Property Insurance (228.1)	-		
27	Accumulated Provision for Injuries and damages (228.2)	-		
28	Accumulated Provision for Pensions and Benefits (228.3)	-		
29	Accumulated Miscellaneous Operating Provision (228.4)	-		
30	Accumulated Provision for Rate Refunds (229)	-		
31	Asset Retirement Obligations (230)	-		
32	TOTAL OTHER Noncurrent Liabilities (Enter Total of Lines 24 thru 30)			
33	CURRENT AND ACCRUED LIABILITIES			
34	Notes Payable (231)	-		
35	Accounts Payable (232)	-		
36	Notes Payable to Associated Companies (233)	-		
37	Account Payable to Associated Companies (234)	-		
38	Customer Deposits (235)	-		
39	Taxes Accrued (236)	262-263		
40	Interest Accrued (237)	-		
41	Dividends Declared (238)	-		
42	Matured Long-Term Debt (239)	-		
43	Matured Interests (240)	-		
44	Tax Collections Payable (241)	-		
45	Miscellaneous Current and Accrued Liabilities(242)			
46	Obligations Under Capital Leases-Current (243)			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No	Title of Account (a)	Ref. Page No. (b)	Balance at Beginning of year (c)	Balance at End of Year (d)
47	Derivative Instrument Liabilities (244)			
48	Derivative Instrument Liabilities - Hedging (245)			
49	TOTAL Current and Accrued Liabilities (Enter Total of Lines 34 thru 48)			
50	DEFERRED CREDITS			
51	Customer Advances for Construction (252)			
52	Accumulate Deferred Investment Tax Credits (255)	266-267		
53	Deferred Gains from Disposition of Utility Plant (256)			
54	Other Deferred Credits (253)	269		
55	Other Regulatory Liabilities (254)	278		
55	Unamortized Gain on Reacquired Debt (257)	269		
56	Accumulated Deferred Income Taxes (281-283)	272-277		
57	TOTAL Deferred Credits (Enter Total of Lines 48 thru 54)			
58				
59				
60				
61				
62				
63				
64				
65				
66				
67				
68				
69				
70				
	TOTAL Liabilities and Other Credits (Enter Total of Lines 15, 23, 32,49 and 57)			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

STATEMENT OF INCOME FOR THE YEAR

1. Report amounts for accounts 412 and 413, Revenue and Expenses from Utility Plant Leased to Others, in another Utility column (i,k,m,o) in a similar manner to a utility department. Spread the amount(s) over Lines 02 thru 24 as appropriate. include these amounts in columns (c) and (d) totals.
2. Report amounts in account 414, Other Utility Operating income, in the same manner as accounts 412 and 413 above.
3. Report data for lines 7,9, and 10 for Natural Gas companies using accounts 404.1, 404.2, 404.3, 407.1 and 407.2.
4. Use pages 122-123 for important notes regarding the statement of income or any account thereof.
5. Give concise explanations concerning unsettled rate proceedings where a contingency exists such that refunds of a material amount may need to be made to the utility's customers or which may result in a material refund to the utility with respect to power or gas purchases. State for each year affected the gross revenues or costs to which the contingency relates and the tax effects together with an explanation of the major factors which affect the rights of the utility to retain such revenues or recover amounts paid with respect to power and gas purchases.
6. Give concise explanations concerning significant amounts of any refunds made or received during the year.

Line No	Title of Account (a)	Ref. Page No. (b)	Balance at Beginning of year (c)	Balance at End of Year (d)
1	UTILITY OPERATING INCOME			
2	Operating Revenues (400)	300-301		
3	Operating Expenses			
4	Operation Expenses (401)	320-323		
5	Maintenance Expenses (402)	320-323		
6	Depreciation Expenses (403)	336-337		
7	Depreciation Expense for Asset Retirement Costs (403.1)	336-337		
8	Amortization. & Depletion of Utility Plant (404-405)	336-337		
9	Amortization of Utility Plant Acquisition Adjustment (406)	336-337		
10	Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs (407)			
11	Amortization of Conversion Expenses (407)			
12	Regulatory Debits (407.3)			
13	(Less) Regulatory Credits (407.4)			
14	Taxes Other than Income Taxes (408.1)	262-263		
15	Income Taxes - Federal (409.1)	262-263		
16	- Other (409.1)	262-263		
17	Provision for deferred Income Taxes (410.1)	234,272-277		
18	(Less) Provision for Deferred Income Taxes - Cr. (411.1)	234,272-277		
19	Investment Tax Credit Adj. - Net (411.4)	266		
20	(Less) Gains from Disp. Of Utility Plant (411.6)			
21	Losses from Disp. Of Utility Plant (411.7)			
22	(Less) Gains from Disposition of Allowances (411.8)			
23	Losses from Disposition of Allowances (411.9)			
24	Accretion Expense (411.10)			
25	TOTAL Utility Operating Expenses (Enter Total of Lines 4 thru 24)			
26	Net Utility Operating Income (Enter Total of line 2 less 25) (Carry forward to page 117, line 25)			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

STATEMENT OF INCOME FOR THE YEAR (Continued)

resulting from settlement of any rate proceeding affecting revenues received or costs incurred for power or gas purchases, ard a summary *of* the adjustments made to balance sheet, income, and expense accounts.

7. if any notes appearing in the report to stockholders are applicable to this Statement *of* Income, such notes may be included on pages 122-123.

B. Enter on pages 122-123 a concise explanation of only those changes in accounting methods made during the year which had an effect on net income, including the basis of allocations and apportiorunents from those used in the precedingl year. Also give the approximate dollar effect of such changes.

9. Explain in a footnote if the previous year's figures are different from that reported in prior reports.

10. If the columns are insufficient for reporting additional utility departments, supply the appropriate account titles, lines 2 to 23, and report the information in the blank space on pages.122-123 or in a footnote.

ELECTRIC UTILITY		GAS UTILITY		OTHER UTILITY		
Current Year (e)	Previous Year (f)	Current Year (g)	Previous Year (h)	Current Year (i)	Previous Year (j)	Line No.
						1
						2
						3
						4
						5
						6
						7
						8
						9
						10
						11
						12
						13
						14
						15
						16
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						18
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						21
						22
						23
						24
						25
						26

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -8-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

STATEMENT OF INCOME FOR THE YEAR (Continued)

	OTHER UTILITY		OTHER UTILITY		OTHER UTILITY	
Line No.	Current Year (k)	Previous Year (l)	Current Year (m)	Previous Year (n)	Current Yar (o)	Previous Year (p)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
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12						
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23						
24						
25						
26						

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -9-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

STATEMENT OF INCOME FOR THE YEAR (Continued)

Line No	Account (a)	(Ref.) Page No. (b)	TOTAL Current Year (c)	TOTAL Previous Year (d)
27	Net Utility Operating Income (Carried forward from page 114)	--		
28	Other Income and Deductions			
29	Other Income			
30	Nonutility Operating Income			
31	Revenues From Merchandising, Jobbing and Contract Work (415)			
32	(Less) Costs and Exp. Of Merchandising, Job & Contract Work (416)			
33	Revenues From Nonutility Operations (417)			
34	(Less) Expenses of Nonutility Operations (417.1)			
35	Nonoperating Rental Income (418)			
36	Equity in Earnings of Subsidiary Companies (418.1)	119		
37	Interest and Dividend Income (419)			
38	Allowance for Other Funds Used During Construction (419.1)			
39	Miscellaneous Nonoperating Income (421)			
40	Gain on Disposition of Property (421.2)			
41	TOTAL Other Income (Enter Total of Lines 31 thru 40)			
42	Other Income Deductions			
43	Loss on Disposition of Property (421.2)			
44	Miscellaneous Amortization (425)	340		
45	Miscellaneous Income Deductions (426.1-426.5)	340		
46	TOTAL Other Income Deductions (Total of Lines 43 thru 45)			
47	Taxes Applicable To Other Income and Deductions			
48	Taxes Other than Income Taxes (408.2)	262-263		
49	Income Taxes - Federal (409.2)	262-263		
50	Income Taxes - Other (409.2)	262-263		
51	Provision for Deferred Inc. Taxes (410.2)	234,272-277		
52	(Less) Provision for Deferred Income Taxes - Credit (411.2)	234,272-277		
53	Investment Tax Credit Adj. - Net (411.5)			
54	(Less) Investment Tax Credits (420)			
55	TOTAL Taxes on Other Income and Deductions (Total of 48 thru 54)			
56	Net Other Income and Deductions (Enter Total of Lines 41, 46, 55)			
57	Interest Charges			
58	Interest on Long-Term Debt (427)			
59	Amort. Of Debt Disc. And Expense (428)			
60	Amortization of Loss on Reacquired Debt (428.1)			
61	(Less) Amort. Of Premium on Debt - credit (429)			
62	(Less) Amortization of Gain on Reacquired Debt - Credit (429.1)			
63	Interest on Debt to Assoc. Companies (430)	340		
64	Other Interest Expense (431)	340		
65	(Less) Allowance for Borrowed Funds Used During Construction-Cr. (432)			
66	Net Interest Charges (Enter Total of Liens 58 thru 65)			
67	Income Before Extraordinary Items (Total of Lines 27, 56 and 66)			
68	Extraordinary Items			
69	Extraordinary Income (434)			
70	(Less) Extraordinary Deductions (435)			
71	Net Extraordinary Items (Enter Total of Line 69 less Line 70)			
72	Income Taxes-Federal and Other (409.3)	262-263		
73	Extraordinary Items After Taxes (Enter Total of Line 71 less Line 72)			
74	Net Income (Enter Total of Lines 67 and 73)			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106)

1. Report below the original cost of electric plant in service according to the prescribed accounts.
2. In addition to Account 101, Electric Plant in Service (Classified), this page and the next include Account 102, Electric Plant Purchased or Sold; Account 103, Experimental Electric Plant Unclassified; and Account 106, Completed Construction Not Classified-Electric.
3. Include in column (c) or (d), as appropriate, corrections of additions and retirements for the current or preceding year.
4. For revisions to the amount of initial asset retirement costs capitalized, included by primary plant account, increases in column (c) additions and reductions in column (e) adjustments.
5. Enclose in parentheses credit adjustments of plant accounts to indicate the negative effect of such accounts.
6. Classify Account 106 according to prescribed ac- counts, on an estimated basis if necessary, and include the entries in column (c). Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b). Likewise, if the respondent has a significant amount of plant retirements which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirements, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision. Include also in

Line No	Account (a)	Balance at Beginning of year (b)	Addition (c)
1	1. INTANGIBLE PLANT		
2	(301) Organization		
3	(302) Franchises and Consents		
4	(303) Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of Lines 2, 3, and 4)		
6	2. PRODUCTION PLANT		
7	A. Steam Production Plant		
8	(310) Land and Land Rights		
9	(311) Structures and Improvements		
10	(312) Boiler Plant Equipment		
11	(313) Engines and Engine-Driven Generators		
12	(314) Tubogenerator Units		
13	(315) Accessory Electric Equipment		
14	(316) Misc. Power Plant Equipment		
15	(317) Asset Retirement Costs for Steam Production		
16	TOTAL Steam Production Plant (Enter Total of Lines 8 thru 15)		
17	B. Nuclear Production Plant		
18	(320) Land and Land Rights		
19	(321) Structures and Improvements		
20	(322) Reactor Plant Equipment		
21	(323) Turbo generator Units		
22	(324) Accessory Electric Equipment		
23	(325) Misc. Power Plant Equipment		
24	(326) Asset Retirement Costs for Nuclear Production		
25	TOTAL Nuclear Production Plant (Enter Total of Lines 18 thru 24)		
26	C. Hydraulic Production Plant		
27	(330) Land and Land Rights		
28	(331) Structures and Improvements		
29	(332) Reservoirs, Dams, and Waterways		
30	(333) Water Wheels, Turbines, and Generators		
31	(334) Accessory Electric Equipment		
32	(335) Misc. Power Plant Equipment		
33	(336) Roads, Railroad, and Bridges		
34	(337) Asset Retirement Costs for Hydraulic Production		
35	TOTAL Hydraulic Production Plant (Enter Total of Lines 27 thru 34)		
36	D. Other Production Plant		
37	(340) Land and Land Rights		
38	(341) Structures and Improvements		
39	(342) Fuel Holders, Products, and Accessories		
40	(343) Prime Movers		
41	(344) Generators		
42	(345) Accessory Electric Equipment		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -11-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106) (Continued)

column (d) reversals of tentative distributions of prior year of unclassified retirements. Show in a footnote the account distributions of these tentative classifications in columns (c) and (d), including the reversals of the prior years tentative account distributions of these amounts. Careful observance of the above instructions and the texts of Accounts 101 and 106 will avoid serious omissions of the reported amount of respondent's plant actually in service at end of year.

7. Show in column (f) reclassifications or transfers within utility plant accounts. Include also in column (f) the additions or reductions of primary account classifications arising from distribution of amounts initially recorded in Account 102, include in column (e) the amounts with respect to accumulated provision for depreciation, acquisition adjustments, etc., and show in column(f) only the offset to the debits or credits distributed in column (f) to primary account classifications.

8. For Account 399, state the nature and use of plant included in this account and if substantial in amount submit a supplementary statement showing subaccount classification of such plant conforming to the requirement of these pages.

9. For each amount comprising the reported balance and changes in Account 102, state the property purchased or sold, name of vendor or purchase, and date of transaction. If proposed journal entries have been filed with the Commission as required by the Uniform System of Accounts, give also date of such filing.

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)		Line No.
					1
				(301)	2
				(302)	3
				(303)	4
					5
					6
					7
				(310)	8
				(311)	9
				(312)	10
				(313)	11
				(314)	12
				(315)	13
				(316)	14
				(317)	15
					16
					17
				(320)	18
				(321)	19
				(322)	20
				(323)	21
				(324)	22
				(325)	23
				(326)	24
					25
					26
				(330)	27
				(331)	28
				(332)	29
				(333)	30
				(334)	31
				(335)	32
				(336)	33
				(337)	34
					35
					36
				(340)	37
				(341)	38
				(342)	39
				(343)	40
				(344)	41
				(345)	42

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -12-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106)

Line No	Account (a)	Balance at Beginning of year (b)	Addition (c)
43	(346) Misc. Power Plant Equipment		
44	(347) Asset Retirement Costs for Other Production		
45	TOTAL Other Prod. Plant (Enter Total of Lines 37 thru 44)		
46	TOTAL Prod. Plant (Enter Total of Lines 16, 25, 35, and 45)		
47	3. TRANSMISSION PLANT		
48	(350) land and Land Rights		
49	(352) Structures and Improvements		
50	(353)Station Equipment		
51	(354)Towers and Fixtures		
52	(355)Poles and Fixtures		
53	(356) Overhead Conductors and Devices		
54	(357) Underground conduit		
55	(358) Underground Conductors and Devices		
56	(359) Roads and Trails		
57	(359.1) Asset Retirement Costs for Transmission Plant		
58	TOTAL Transmission Plant (Enter Total of Lines 44 thru 52)		
59	4. DISTRIBUTION PLANT		
60	(360) Land and Land Rights		
61	(361) Structures and Improvements		
62	(362) Station Equipment		
63	(363) Storage Battery Equipment		
64	(364) Poles, Towers, and Fixtures		
65	(365) Overhead Conductors and Devices		
66	(366) Underground Conduit		
67	(367) Underground Conductors and Devices		
68	(368) Line Transformers		
69	(369) Services		
70	(370) Meters		
71	(371) Installations on Customer Premises		
72	(372) Leased Property on Customer Premises		
73	(373) Street Lighting and Signal Systems		
74	(374) Asset Retirement Costs for Distribution Plant		
75	total distribution plant (enter total OF lines 60 thru 74)		
76	5. GENERAL PLANT		
77	(389) Land and Land Rights		
78	(390) Structures and Improvements		
79	(391) Office Furniture and Equipment		
80	(392) Transportation Equipment		
81	(393) Stores Equipment		
82	(394) Tools, Shop and Garage Equipment		
83	(395) Laboratory, Equipment		
84	(396)Power Operated Equipment		
85	(397) Communication Equipment		
86	(398) Miscellaneous Equipment		
87	SUBTOTAL (Enter Total of Lines 77 thru 86)		
88	(399) Other Tangible Property		
89	(399.1) Asset Retirement Costs for General Plant		
90	TOTAL General Plant (Enter Total of Lines 87, 88, and 89)		
91	TOTAL (Accounts 101 and 106) (Lines 5, 16, 25, 35, 45, 58, 75,90)		
92	(102) Electric Plant Purchased (See Instr. 8)		
93	(Less) (102) Electric Plant Sold (See Instr. 8)		
94	(103) Experimental Plant Unclassified		
95	TOTAL Electric Plant in Service (Enter Total of Lines 91 thru 94)		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -13-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106) (Continued)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)		Line No.
				(346)	43
				(347)	44
					45
					46
					47
				(350)	48
				(352)	49
				(353)	50
				(354)	51
				(355)	52
				(356)	53
				(357)	54
				(358)	55
				(359)	56
				(359.1)	57
					58
					59
				(360)	60
				(361)	61
				(362)	62
				(363)	63
				(364)	64
				(365)	65
				(366)	66
				(367)	67
				(368)	68
				(369)	69
				(370)	70
				(371)	71
				(372)	72
				(373)	73
				(374)	74
					75
					76
				(389)	77
				(390)	78
				(391)	79
				(392)	80
				(393)	81
				(394)	82
				(395)	83
				(396)	84
				(397)	85
				(398)	86
					87
				(399)	88
				(399.1)	89
					90
					91
				(102)	92
					93
				(103)	94
					95

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -14-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC UTILITY PLANT (Account 108)

1. Explain in a footnote any important adjustments during year.
2. Explain in a footnote any difference between the amount for book cost of plant retired, Line 11, column (c), and that reported for electric plant in service, pages 204-207, column (d), excluding retirements of nondepreciable property.
3. The provisions of Account 108 in the Uniform System of accounts require that retirements of depreciable plant be recorded when such plant is removed from service. If the respondent has a significant amount of plant retired at year end which has not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired. In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications.
4. Show separately interest credits under a sinking fund or similar method of depreciation accounting.

Section A. Balances and Changes During Year

Line No	Item (a)	Total (c+d+e) (b)	Electric Plant in Service (c)	Electric Plant Held for Future Use (d)	Electric Plant Leased to Others (e)
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to:				
3	(403) Depreciation Expense				
4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Expense of Electric Plant Leased to Others				
6	Transportation Expenses-Clearing				
7	Other Clearing Accounts				
8	Other Accounts (Specify):				
9					
10	Total Depreciation, Provision For Year (Enter Total of Lines 3 thru 9)				
11	Net Charges for Plant Retired:				
12	Book Cost of Plant Retired				
13	Cost of Removal				
14	Salvage (Credit)				
15	TOTAL Net Charges For Plant Retired (Enter Total of Lines 12 thru 14)				
16	Other Debit or Credit Items (Describe):				
17					
18	Book Cost of Asset Retirement Costs Retired				
19	Balance End of Year (Enter Total of lines 1, 10, 15, 16 and 18)				
	Section B. Balances at End of Year According to Functional Classifications				
20	Steam Production				
21	Nuclear Production				
22	Hydraulic Production-Conventional				
23	Hydraulic Production-Pumped Storage				
24	Other Production				
25	Transmission				
26	Distribution				
27	General				
28	TOTAL (Enter Total of Lines 20 thru 27)				

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

DEPRECIATION AND AMORTIZATION OF ELECTRIC PLANT (Accounts 403, 403.1, 404, 405)
(Except Amortization of Acquisition Adjustments)

1. Report in Section A for the year the amounts for: (a) Depreciation Expense (Account 403); (b) Amortization of Limited-Term Electric Plant (Account 404); and (c) Amortization of Other Electric Plant (Account 405).

2. Report in section 8 the rates used to compute amortization charges for electric plant (Accounts 404 and 405). State the basis used to compute charges and whether any changes have been made in the basis or rates used from the preceding report year.

3. Report all available information called for in section C every fifth year beginning with report year 1971, reporting annually only changes to columns (c) through (g) from the complete report of the preceding year.

Unless composite depreciation accounting for total depreciable plant is followed, list numerically in column (a) each plant subaccount, account or functional classification, as appropriate, to which a rate is applied. Identify at the bottom of section C the type of plant included in any subaccount used.

In column (b) report all depreciable plant balances to which rates are applied showing subtotals by functional Classifications and showing composite total. Indicate at the bottom of section C the manner in which column balances are obtained. If average balances, state the method of averaging used.

For columns (c), (d), and (e) report available information for each plant subaccount, account or functional classification Listed in column (a). If plant mortality studies are prepared to assist in estimating average service Lives, show in column (f) the type mortality curve selected as most appropriate for the account and in column (g), if available, the weighted average remaining life of surviving plant.

If composite depreciation accounting is used, report available information called for in columns (b) through (g) on this basis.

4. If provisions for depreciation were made during the year in addition to depreciation provided by application of reported rates, state at the bottom of section C the amounts and nature of. the provisions and the plant items to which related.

A. Summary of depreciation and Amortization Charges

Line No	Functional Classification (a)	Depreciation Expense (Account 403) (b)	Depreciation Expense for Asset Retirement Costs (Account 403.1) (c)	Amortization of Limited-Term Electric Plant (Account 404) (d)	Amortization of Other Electric Plant (Account 405) (e)	Total (f)
1	Intangible Plant					
2	Steam Product Plant					
3	Nuclear Production Plant					
4	Hydraulic Production Plant -- Conventional					
5	Hydraulic Production Plant -- Pumped Storage					
6	Other Production Plant					
7	Transmission Plant					
8	Distribution Plant					
9	General Plant					
10	Common Plant -- Electric					
11	TOTAL					

B. Basis for Amortization Charges

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -16-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

STEAM-ELECTRIC GENERATING PLANT STATISTICS (Large Plants)

1. Report data for plant in Service only.
2. Large plants are steam plants with installed capacity (name plate rating) of 25,000 Kw or more. Report in this page gas-turbine and internal combustion plants of 10,000 KW or more, and nuclear plants.
3. Indicate by a footnote any plant leased or operated as a joint facility.
4. If net peak demand for 60 minutes is not available. Give data which is available, specifying period.
5. If any employees attend more than one plant, report on line 11 the approximate average number of employees assignable to each plant
6. If gas is used and purchased on a therm basis report the Btu content of the gas and the quantity of fuel burned converted to Mct.
7. Quantities of fuel burned (line 39) and average cost per unit of fuel burned (line 42) must be consistent with charges to expense accounts 501 and 547 (line 41) as show on line 21.
8. If more than one fuel is burned in a plant furnish only the composite heat rate for all fuels burned.

Line No	Item (a)	Plant Name: (b)	Plant Name: (c)
1	Kind of Plant (Steam, Internal Combustion, Gas Turbine or Nuclear)		
2	Type of Plant Construction (Convention, Outdoor Boiler, Full Outdoor, Etc.)		
3	Year Originally Constructed		
4	Year Last Unit was Installed		
5	Total Installed Capacity (Maximum Generator Name Plate Ratings in MW)		
6	Next Peak Demand on Plant -- MW (60 minutes)		
7	Plant Hours Connected to Load		
8	Net Continuous Plant Capability (Megawatts)		
9	When not Limited by Condenser Water		
10	When Limited by Condenser Water		
11	Average Number of Employees		
12	Net Generation, Exclusive of Plant Use --KWh		
13	Cost of Plant: Land and Land Rights		
14	Structures and Improvements		
15	Equipment Costs		
16	Asset Retirement Costs		
17	Total Cost		
18	Cost per KW of Installed Capacity (Line 17/ Line 5) including Asset Retirement Costs		
19	Production Expenses: Oper. Supv. & Engr.		
20	Fuel		
21	Coolants and Water (Nuclear Plants Only)		
22	Steam Expenses		
23	Steam From Other Sources		
24	Steam Transferred (Cr.)		
25	Electric Expenses		
26	Misc. Steam (or Nuclear) Power Expenses		
27	Rents		
28	Allowances		
29	Maintenance Supervision and Engineering		
30	Maintenance of Structures		
31	Maintenance of Boiler (Or Reactor) Plant		
32	Maintenance of Electric Plant		
33	Maintenance Misc. Steam (or Nuclear) Plant		
34	Total Production Expenses		
35	Expenses per Net KWh		
36	Fuel: Kind (Coal, Gas, Oil, or Nuclear)		
37	Unit: (Coal-tons of 2,000 lb.) (Oil-barrels of 42 gals.) (Gas=Mcf) (Nuclear-indicate)		
38	Quantity (Units) of Fuel Burned		
39	Avg. Heat Cont. Of Fuel Burned (Btu per lb. Of coal per gal. Of oil or per Mcf of gas) (Give unit if nuclear)		
40	Average Cost of Fuel per Unit, as Delivered f. o. b. Plant During Year		
41	Average Cost of Fuel per Unit Burned		
42	Avg. Cost of Fuel Burned per Million Btu		
43	Avg. Cost of Fuel Burned per Kwh Net Generation		
44	Average Btu per Kwh Net Generation		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -17-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

STEAM-ELECTRIC GENERATING PLANT STATISTICS (Large Plants) (Continued)

9. Items under Cost of Plant are based on U.S. of A. Accounts. Production expenses do not include Purchased Power, System Control and Load Dispatching, and Other Expenses Classified as Other Power Supply Expenses.
10. For IC and GT plants, report Operating Expenses, Account Nos. 547 and 549 on line 26 "Electric Expenses," and Maintenance Account Nos. 553 and 554 on line 331. "Maintenance of Electric Plant." Indicate plants designed for peak load service. Designate automatically operated plants.
11. For a plant equipped with combinations of fossil fuel steam, nuclear steam, hydro, internal combustion or gas-turbine equipment, report each as a separate plant. However, if a gas-turbine unit functions in a combined cycle operation with a conventional steam unit, include the gas-turbine with the steam plant.
12. If a nuclear power generating plat, briefly explain by footnote (a) accounting method for cost of power generated including any excess costs attributed to research and development; (b) types of cost units used for the various components of fuel cost; and (c) any other informative data concerning plant type fuel used, fuel enrichment type and quantity for the report period and other physical and operating characteristics of plant.

Plant Name: (d)	Plant Name: (e)	Plant Name: (f)	Line No.
			1
			2
			3
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			5
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			43

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -18-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

HYDROELECTRIC GENERATING PLANT STATISTICS (Large Plants)

1. Large plants are hydro plants of 10,000 Kw or more of installed capacity (name plate ratings).
2. If any plant is leased, operated under a license from the Federal Energy Regulatory Commission, or operated as a joint facility, indicate such facts in a footnote. If licensed project, give project number.
3. If net peak demand for 60 minutes is not available, give that which is available specifying period.
4. If a group of employees attends more than one generating plan, report on line 11 the approximate average number of employees assignable to each plant.

Line No	Item (a)	FERC Licensed Project No. Plant Name: (b)	FERC Licensed Project No. Plant Name: (c)
1	Kind of Plant (Run-of-River or Storage)		
2	Type of Plant Construction (Conventional or Outdoor)		
3	Year Originally Constructed		
4	Year Last Unit was Installed		
5	Total installed Capacity (Generator Name Plate Rating in MW)		
6	Net Peak Demand on Plant-Megawatts (60 minutes0		
7	Plant Hours Connected to Load		
8	Net Plant Capability (in megawatts)		
9	(a) Under the Most Favorable Operating Conditions		
10	(b) Under the Most Adverse Operating Conditions		
11	Average Number of Employees		
12	Net Generation, Exclusive of Plant Use-KWh		
13	Cost of Plant:		
14	Land and Land Rights		
15	Structures and Improvements		
16	Reservoirs, Dams, and Waterways		
17	Equipments Costs		
18	Roads, Railroads, and Bridges		
19	Asset Retirement Costs		
20	TOTAL Cost (Enter Total of Lines 14 thru 19)		
21	Cost per KW of Installed Capacity (Line 5) including Asset Retirement Costs		
22	Production Expenses:		
23	Operation Supervision and Engineering		
24	Water for Power		
25	Hydraulic Expenses		
26	Electric Expenses		
27	Misc. Hydraulic Power Generation Expenses		
28	Rents		
29	Maintenance Supervision and Engineering		
30	Maintenance of Structures		
31	Maintenance of Reservoirs, Dams, and Waterways		
32	Maintenance of Electric Plant		
33	Maintenance of Misc. Hydraulic Plant		
34	Total Production Expenses (Total lines 23 thru 33)		
35	Expenses per net KWh		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -19-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

HYDROELECTRIC GENERATING PLANT STATISTICS (large Plants) (Continued)

5. The items under Cost of Plant represent accounts or combinations of accounts prescribed by the uniform System of Accounts. Production Expenses do not include P6rchased Power, System control and Load Dispatching, and Other Expenses classified as "Other Power Supply Expenses."

6. Report as a separate plant any plant equipped with combinations of steam, hydro, internal combustion engine, or gas turbine equipment.

FERC Licensed Project No. Plant Name: (d)	FERC Licensed Project No. Plant Name: (e)	FERC Licensed Project No. Plant Name: (f)	Line No
			1
			2
			3
			4
			5
			6
			7
			8
			9
			10
			11
			12
			13
			14
			15
			16
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			35

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

PUMPED STORAGE GENERATING PLANT STATISTICS (Large Plants)

1. Large plants and pumped storage plants of 10,000 Kw or more of installed capacity (name plate ratings).
2. If any plant is leased, operating under a license from the Federal Energy Regulatory Commission, or operated as a joint facility, indicate such facts in a footnote. Give project number.
3. If net peak demand for 60 minutes is not available, give the which is available, specifying period.
4. If a group of employees attends more than one generating plant, report on line 8 the approximate average number of employees assignable to each plant.
5. The items under Cost of Plant represent accounts or combinations of accounts prescribed by the Uniform System of Accounts. Production Expenses do not include Purchased Power System Control and Load Dispatching, and Other Expenses classified as "Other Power Supply Expenses."

Line No	Item (a)	FERC Licensed Project No. Plant Name: (b)
1	Type of Plant Construction (Conventional or Outdoor)	
2	Year Originally Constructed	
3	Year Last Unit was Installed	
4	Total Installed Capacity (Generator Name Plate Ratings in MW)	
5	Net Peak Demand on Plant-Megawatts (60 minutes)	
6	Plant Hours Connected to Load While Generating	
7	Net Plant Capability (In megawatts):	
8	Average Number of Employees	
9	Generation Exclusive of Plant Use-KWh	
10	Energy Used for Pumping-KWH	
11	Net Output for Load (Line 9 minus Line 10)-KWh	
12	Cost of Plant	
13	Land and Land Rights	
14	Structures and Improvements	
15	Reservoirs, Dams, and Waterways	
16	Water Wheels, Turbines, and Generators	
17	Accessory Electric Equipment	
18	Miscellaneous Powerplants Equipment	
19	Roads, Railroads, and Bridges	
20	Asset Retirement Costs	
21	TOTAL Cost (Enter Total of Lines 13 thru 20)	
22	Cost per KW of installed Capacity (Line 21 ÷ Line 4) including Asset Retirement Costs	
23	Production Expenses	
24	Operation Supervision and Engineering	
25	Water for Power	
26	Pumped Storage Expenses	
27	Electric Expenses	
28	Misc. Pumped Storage Power Generation Expenses	
29	Rents	
30	Maintenance Supervision and Engineering	
31	Maintenance of Structures	
32	Maintenance of Reservoirs, Dams, and Waterways	
33	Maintenance of Electric Plant	
34	Maintenance of Misc. Pumped Storage Plant	
35	Production Exp. Before Pumping Exp. (Enter Total of Lines 24 thru 34)	
36	Pumping Expenses	
37	Total Production Expenses (Enter Total of Lines 35 and 36)	
38	Expenses per Kwh (Enter result of line 37 divided by Line 9)	

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -21-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

PUMPED STORAGE GENERATING PLANT STATISTICS (Large Plants) (Continued)

6. Pumping energy (line 10) is that energy measured as input to the-plant for pumping purposes.

7. Include on line 35 the cost of energy used in pumping into the storage reservoir. When this item cannot be accurately computed leave Lines 35, 36 and 37 blank and footnote the company's principal sources of pumping power, the estimated amounts of energy from each station or other source that individually provides more than 10 percent of the total energy used for pumping, and production expenses per net MWH as reported herein for each source described. Group together stations and other resources which individually provide less than 10 percent of total pumping energy. If contracts are made with others to purchase power for pumping, give the supplier contract number, and date of contract.

FERC Licensed Project No. Plant Name: (d)	FERC Licensed Project No. Plant Name: (e)	FERC Licensed Project No. Plant Name: (f)	Line No
			1
			2
			3
			4
			5
			6
			7
			8
			9
			10
			11
			12
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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -22-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

GENERATING PLANT STATISTICS (Small Plants) (Continued)

3. List plants appropriately under subheadings for steam, hydro, nuclear, internal combustion and gas turbine plants. For nuclear, see instruction 11, page 403:
4. If net peak demand for 60 minutes is not available, give the which is available, specifying period.
5. If any plant is equipped with combinations of steam, hydro internal combustion or gas turbine equipment, report each as a separate plant. However, if the exhaust heat from the gas turbine is utilized in a steam turbine regenerative feed water cycle, or for preheated combustion air in a boiler, report as one plant.

Plant Cost (Including Asset Retirement Costs) Per MW Installed Capacity (g)	Operation Excluding Fuel (h)	Production Expenses Fuel (i)	Production Expenses Maintenance (j)	Kind of Fuel (k)	Fuel Cost (In cents per million Btu) (l)	Line No
						1
						2
						3
						4
						5
						6
						7
						8
						9
						10
						11
						12
						13
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						45
						46

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -23-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

TRANSMISSION LINES ADDED DURING YEAR

7. Report below the information called for concerning Transmission lines added or altered during the year. It is not necessary to report minor revisions of lines.
2. Provide separate subheadings for overhead and underground construction and show each transmission line separately. If actual costs of competed construction are not readily available for reporting columns (l) to (p), it is permissible to report in these columns the estimated final completion.

Line No	LINE DESIGNATION		Line Length in Miles	SUPPORTING STRUCTURE		CIRCUITS PER STRUCTURE	
	From (a)	To (b)	(c)	Type (d)	Average Number Per Miles (e)	Present (f)	Ultimate (g)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
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31							
32							
33							
34							
35							
36							
37							
38							
39							
40							
41							
42							
43							
44	TOTAL						

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -24-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

TRANSMISSION LINES ADDED DURING YEAR (Continued)

costs. Designate, however, if estimated amounts are reported. Include costs of Clearing Land and Rights-of-Way, and Roads and Trails, in column (l) with appropriate footnote, and costs of Underground Conduit in column (m)

3. If design voltage differs from operating voltage, indicate such fact by footnote; also where line is other than 60 cycle, 3 phase, indicate such other characteristic.

CONDUCTORS			Voltage KV (Operating) (k)	LINE COST					Line No.
Size (h)	Specification (i)	Configuration and Spacing (j)		Land and Land Rights (l)	Poles, Towers and Fixtures (m)	Conductors and Device (n)	Asset Retirement Costs (o)	Total (p)	
									1
									2
									3
									4
									5
									6
									7
									8
									9
									10
									11
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									44

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -25-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

PART III: COMPARATIVE BALANCE SHEET (Continued)

	Liabilities and Other Credits (a)	Balance at Beginning of year (b)	Balance at End of Year (c)
01	Common Stock Issued *(201)*		
02	Preferred Stock Issued *(204)*		
03	Miscellaneous Paid-in Capital *(211)*		
04	Installments Received on Capital Stock *(212)*		
05	Discount on Capital Stock - Debit *(213)*		
06	Capital Stock Expenses - Debit *(214)*		
07	Retained Earnings *(215-216)*		
08	Reacquired Capital Stock - Debit *(217)*		
09	Noncorporate Proprietorship *(218)*		
10	Accumulated Other Comprehensive Income *(219)*		
11	TOTAL PROPRIETARY CAPITAL *(Enter total of lines 01 thru 10)*		
12	Bonds *(221)*		
13	Advances From Associated Companies *(223)*		
14	Other Long-term Debt (Specify in footnote) *(224)*		
15	Unamortized Premium on Long-term Debt *(225)*		
16	Unamortized Discount on Long-term Debt - Debit (226)		
17	TOTAL LONG-TERM DEBT *(Enter total of lines 12 thru 16)*		
18	Other Noncurrent Liabilities:		
19	Obligations Under Capital Leases - Noncurrent *(227)*		
20	Accumulated Provision tor Property Insurance *(228, 1)*		
21	Accumulated Provision for Injuries and Damages *(228.2)*		
22	Accumulated Provision for Pensions and Benefits (228.3)		
23	Accumulated Miscellaneous Operating Provisions *(228.4)*		
24	Accumulated Provision for Rate Refunds *(229)*		
25	Asset Retirement Obligations *(230)*		
26	*TOTAL OTHER NONCURRENT LIABILITIES (Enter Total of Lines 19 thru 25)*		
27	Current and Accrued Liabilities:		
28	Notes and Accounts Payable (Report amounts applicable to associated companies in a footnote) *(231* to *234)*		
29	Customer Debits *(235)*		
30	Taxes Accrued *(236)*		
31	Interest Accrued *(237)*		
32	Miscellaneous Current and Accrued Liabilities *(242)*		
33	Obligations Under Capital Leases-Current *(243)*		
34	Derivative Instrument Liabilities *(244)*		
35	Derivative Instrument Liabilities - Hedges *(245)*		
36	TOTAL CURRENT AND ACCRUED LIABILITIES *(Enter total of* lines *28* thru *35)*		
37	Deferred Credits:		
38	Customer Advances for Construction *(252)*		
39	Other Deferred Credits *(253)*		
40	Other Regulatory Liabilities *(254)*		
41	Accumulated Deferred Investment Tax Credits *(255)*		
42	Deferred Gains from Disposition of Utility Plant *(256)*		
43	Unamortized Gain on Reacquired Debt *(257)*		
44	Accumulated Deferred Income Taxes *(281-283)*		
45	TOTAL DEFERRED CREDITS *(Enter total of lines 38 thru 44)*		
46	TOTAL LIABILITIES AND OTHER CREDITS *(Enter total of lines 11, 17, 26, 36 and 45)*		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -26-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

PART IV: STATEMENT OF INCOME FOR THE YEAR (Continued)

1. Report amounts for accounts 412 and 413, Revenues and expenses from Utility Plant Leased to Others, in the Other Utility column (h, I or j, k) in a similar manner to a utility department. Spread the amount(s) over lines 01 to 22 as appropriate. Include these amounts in column (b) and (c) totals.
2. Report amounts for account 414, Other Utility Operating Income, in the same manner as accounts 412 and 413.
3. Provide an explanation in Part VII. Notes to Financial Statements, of such unsettled rate proceedings where a contingency exists that refunds of a material amount may need to be made to the utility's customers or which may result in a material refund to the utility with respect to power or gas purchases. State for each year affected the gross revenues or costs to which the contingency relates and the tax effects; include an explanation for the major factors which affect the rights of the utility to retain such revenues or to recover amounts paid with respect to power or gas purchases.

	Account (a)	Total (d to k)		Electric Utility	
		Current Year (b)	Change From Previous Year (c)	Current Year (d)	Change From previous Year (e)
01	UTILITY OPERATING INCOME				
02	Operating Revenues *(400)*				
03	Operating Expenses:				
04	Operating Expenses (401)				
05	Maintenance Expense (402)				
06	Depreciation Expense (403)				
07	Depreciation Expense for Asset Retirement Costs (403.1)				
08	Amortization Expense (Specify by account)				
09					
10	Regulatory Debits (407.3)				
11	(Less) Regulatory Credits (407.4)				
12	Taxes Other Than Income Taxes (408.1)				
13	Federal Income Taxes (409.1)				
14	Other Income Taxes (409. 1)				
15	Provision For Deferred Income Taxes (410.1)				
16	Provision For Deferred Income Taxes - Credit (411.1)				
17	Investment Tax Credit Adjustments - Net (411.4)				
18	Gains From Disposition of Utility Plant (411.6)				
19	Losses From Disposition of Utility Plant (411.7)				
20	Gains From Disposition of Allowances (411.8)				
21	Losses From Disposition of Allowances (411.9)				
22	Accretion Expense (411.10)				
23	TOTAL UTILITY OPERATING EXPENSES *(Enter total of lines 04 thru 22)*				
24	Net Utility Operating Income *(Enter total of* line 02 less 23)				

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -27-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

PART IV: STATEMENT OF INCOME FOR THE YEAR (Continued)

4. Provide an explanation in Part VII, Notes to Financial Statements, of significant amounts of any refunds made or received during the year resulting from settlement of any rate proceeding affecting revenued received for costs incurred for power or gas purchases and a summary of the adjustment made to balance sheet, income, and expense accounts.

5. If any note appearing in the report to stockholders are applicable to the statement of income, either include such note in an attachment, or enter such data in Part VII.

6. Provide an explanation in Part VII, Note " " " of only those changes in account methods made during the year which had an effect on net income, including the basis of allocations and apportionments from those used in the preceding year. Also, give the approximate dollar effects of such changes.

Gas Utility		Other Utility		Other utility		Account	
Current Year (f)	Change From Previous Year (g)	Current Year (h)	Change From Previous Year (i)	Current Year (j)	Change From Previous Year (k)		
							01
						(400)	02
							03
						(401)	04
						(402)	05
						(403)	06
						(403.1)	07
							08
							09
						(407.3)	10
						(407.4	11
						(408.1)	12
						(409.1)	13
						(409.1)	14
						(410.1)	15
						(411.1)	16
						(411.4)	17
						(411.6)	18
						(411.7)	19
						(411.8)	20
						(411.9)	21
						(411.10)	22
						TOTAL	23
						NET	24

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

PART IV: STATEMENT OF INCOME FOR THE YEAR (Continued)

	Account (a)	Total Current Year (b)	Total Change From Previous Year (c)
24	Net Utility Operating Income *(Carrier Forward from line 24, page 6)*		
25	OTHER INCOME AND DEDUCTIONS		
26	Other Income:		
27	Nonutility Operating Income *(415-418)*		
28	Interest and Dividend Income *(419)*		
29	Allowance for Other Funds Used During Construction *(419.1)*		
30	Miscellaneous Nonoperating Income *(421)*		
31	Gain on Disposition of Property *(415-418)*		
32	TOTAL OTHER INCOME *(Enter Total of lines 27 thru 31)*		
33	Other Income Deductions:		
34	Loss on Disposition of Property *(421.2)*		
35	Miscellaneous Amortization *(425)*		
36	Miscellaneous Income Deductions *(426.1 - 426.5)*		
37	TOTAL OTHER INCOME DEDUCTIONS *(Enter total of lines 34 thru 36)*		
38	Taxes Applicable to Other Income and Deductions:		
39	Taxes Applicable to Other Income and Deductions:		
40	Federal Income Taxes *(409.2)*		
41	Other Income Taxes *(409.2)*		
42	Provision for Deferred Income Taxes *(410.2)*		
43	Provision for Deferred Income *(411.2)*		
44	Investment Tax Credit Adjustments - Net *(411.5)*		
45	Investment Tax Credits *(420)*		
46	TOTAL TAXES APPLICABLE TO OTHER INCOME AND DEDUCTIONS *(Enter total of lines 40 thru 45)*		
47	Net Other Income and Deductions *(Enter total of line 32 less 37 and 46)*		
48	INTEREST CHARGES		
49	Interest on Long-term Debt *(427)*		
50	Amortization of Debt Discount and Expense *(428)*		
51	Amortization of Loss on Reacquired Debt *(428.1)*		
52	Amortization of Premium on Debt - Credit *(429)*		
53	Amortization of Gain on Reacquired Debt - Credit *(429. 1)*		
54	Interest on Debt to Associated Companies *(430)*		
55	Other Interest Expense *(431)*		
56	Allowance For Borrowed Funds Used During Construction - Credit *(432)*		
57	Net Interest Charge *(Enter total of lines 49 thru 56)*		
58	Income Before Extraordinary Items *(Enter total of lines 24 and 47, less 57)*		
59	EXTRAORDINARY ITEMS		
60	Extraordinary Income *(434)*		
61	Extraordinary Deduction - Debit *(435)*		
62	Net Extraordinary Items *(Enter total of line 60 less 61)*		
63	Income Taxes - *(409.3)*		
64	Extraordinary Items After Taxes *(Enter total of line 62 less 63)*		
65	Net Income *(Enter total of* lines *58 and* 64)		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -29-

(SUBSTITUTE PAGE FOR PART III)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Ref Page No. (b)	Balance at Beginning of Year (c)	Balance at End of Year (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on-Capital Stock (207)	252		
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	(Less) Discount on Capital Stock (213)	254		
10	(Less) Capital Stock Expense (214)	254		
11	Retained Earnings (215, 215.1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216.1)	118-119		
13	(Less) Reacquired Capital Stock (217)	250-251		
14	Accumulated Other Comprehensive Income *(219)*	122 (a) (b)		
15	TOTAL Proprietary Capital *(Enter Total of* lines 2 *thru 14)*	-		
16	LONG-TERM DEBT			
17	Bonds (221)	256-257		
18	(Less) Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	-		
22	(Less) Unamortized Discount on Long-Term Debt-Debit (226)	-		
23	TOTAL Long-Term Debt (Enter Total *of* lines 17 thru 22)	-		
24	OTHER NONCURRENT LIABILITIES			
25	Obligations Under Capital Leases - Noncurrent (227)	-		
26	Accumulated Provision for Property Insurance (228.1)	-		
27	Accumulated Provision for Injuries and Damages (228.2)	-		
28	Accumulated Provision for Pensions and Benefits (228.3)	-		
29	Accumulated Miscellaneous Operating Provisions (228.4)	-		
30	Accumulated Provision for Rate Refunds (229)	-		
31	Asset Retirement Obligations (230)	-		
32	TOTAL Other Noncurrent Liabilities (Enter Total *of* lines 25 thru 31)			
33	CURRENT AND ACCRUED LIABILITIES			
34	Notes Payable (231)	-		
35	Accounts Payable (232)	-		
36	Notes Payable to Associated Companies (233)	-		
37	Accounts Payable to Associated Companies (234)	-		
38	Customer Deposits (235)	-		
39	Taxes Accrued (236)	262-263		
40	Interest Accrued (237)	-		
41	Dividends Declared (238)	-		
42	Matured Long-Term Debt (239)	-		
43	Matured Interest (240)	-		
44	Tax Collections Payable (241)	-		
45	Miscellaneous Current and Accrued Liabilities (242)	-		
46	Obligations Under Capital Leases-Current (243)	-		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -30-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No.	Title of Account (a)	Ref Page No. (b)	Balance at Beginning of Year (c)	Balance at End of Year (d)
47	Derivative Instrument Liabilities (244)			
48	Derivative Instrument Liabilities - Hedging (245)			
49	TOTAL Current and Accrued Liabilities *(Enter Total of* lines 34 *thru 48)*			
50	DEFERRED CREDITS			
51	Customer Advances for Construction (252)			
52	Accumulated Deferred Investment Tax Credits (255)	266-267		
53	Deferred Gains from Disposition of Utility Plant (256)			
54	Other Deferred Credits (253)	269		
55	Other Regulatory Liabilities (254)	278		
56	Unamortized Gain on Reacquired Debt (257)	-		
57	Accumulated Deferred Income Taxes (281-283)	272-277		
58	TOTAL Deferred Credits *(Enter Total of lines 51 thru 57)*			
59				
60				
61				
62				
63				
64				
65				
66				
67				
68				
69				
70				
71				
72	TOTAL Liabilities and Other Credits *(Enter Total of lines 15, 23, 32, 49 and 58)*			

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -31-

(SUBSTITUTE PAGE FOR PART IV)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

STATEMENT OF INCOME FOR THE YEAR

1. Report amounts for accounts *412* and *413, Revenue and Expenses from Utility Plant Leased* to Others, in another utility column (l, k, m, o) in a similar manner to a utility department. Spread the amount(s) over lines *02* thru *24* as appropriate. Include these amounts in columns (c) and (d) totals.
2. Report amounts in account *414*, Other *Utility* Operating Income, in the same manner as accounts *412* and *413* above.
3. Report data for lines *7, 9,* and 10 for Natural Gas companies using accounts *404.1, 404.2, 404.3, 407. 1,* and *407.2.*
4. *Use* page *122* for important notes regarding the statement of income or any account thereof.
5. Give concise explanations concerning unsettled rate proceedings where a contingency exists such that refunds of a material amount may need to be made to the utility's customers or which may result in a material refund to the utility with respect to power or gas purchases. State for each year affected the gross revenues or costs to which the contingency relates and the tax effects together with an explanation of the major factors which affect the rights of the utility to retain such revenues or recover amounts paid with respect to power and gas purchases.
6. Give concise explanations concerning significant amounts of any refunds made or received during the year

Line No.	Title of Account (a)	Ref Page No. (b)	TOTAL Current Year (c)	TOTAL Previous Year (d)
1	UTILITY OPERATING INCOME			
2	Operating Revenues (400)	300-301		
3	Operating Expenses			
4	Operation Expenses (401)	320-325		
5	Maintenance Expenses (402)	320-325		
6	Depreciation Expense (403)	336-338		
7	Depreciation Expense for Asset Retirement Costs (403.1)	336-338		
8	Amortization & Depletion of Utility Plant (404-405)	336-338		
9	Amortization of Utility Plant Acquisition Adjustment (406)	336-338		
10	Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs (407)			
11	Amortization of Conversion Expenses (407)			
12	Regulatory Debits (407-3)			
13	(Less) Regulatory Credits (407.4)			
14	Taxes Other Than Income Taxes (408.1)	262-263		
15	Income Taxes - Federal (409.1)	262-263		
16	- Other (409.1)	262-263		
17	Provision for Deferred Income Taxes (410.1)	234, 272-277		
18	(Less) Provision for Deferred Income Taxes-Cr. (411.1)	234, 272-277		
19	Investment Tax Credit Adjustment - Net (411.4)	266		
20	(Less) Gains from Disp. of Utility Plant (411.6)			
21	Losses from Disp. of Utility Plant (411.7)			
22	(Less) Gains from Disposition of Allowances (411.8)			
23	Losses from Disposition of Allowances (411.9)			
24	Accretion Expense (411.10)			
25	TOTAL Utility Operating Expenses (Enter Total of lines 4 thru 24)			
26	Net Utility Operating Income (Enter Total of line 2 less 25) (Carry forward to page 117, line 27)			

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -32-

(SUBSTITUTE PAGE FOR PART IV)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

STATEMENT OF INCOME FOR THE YEAR (Continued)

Line No.	Title of Account (a)	Ref Page No. (b)	TOTAL Current Year (c)	TOTAL Previous Year (d)
27	Net Utility Operating Income *(Carried forward from page 114)*			
28	Other Income and Deductions			
29	Other Income			
30	Nonutiity Operating Income			
31	Revenues From Merchandising, Jobbing and Contract Work (415)			
32	(Less) Costs and Expenses of Merchandising, Jobbing & Contract Work (416)			
33	Revenues From Nonutility Operations (417)			
34	(Less) Expenses of Nonutility operations (417.1,)			
35	Nonoperating Rental Income (418)			
36	Equity in Earnings of Subsidiary Companies (418.1)	119		
38	Interest and Dividend Income (419)			
39	Allowance for Other Funds Used During Construction (411.1)			
40	Gain on Disposition of Property (421.1)			
41	TOTAL Other income *(Enter Total of lines 31 thru 40)*			
42	Other Income Deductions			
43	Loss on Disposition of Property (421.2)			
44	Miscellaneous Amortization (425)	340		
45	Miscellaneous Income Deductions (426.1 thru 426.5)	340		
46	TOTAL Other Income Deductions(Total of lines 43 thru 45)			
47	Taxes Applicable to Other Income and Deductions			
48	Taxes Other Than income Taxes (408.2)	262-263		
49	Income Taxes-Federal (409.2)	262-263		
50	Income Taxes-Other (409.2)	262-263		
51	Provision for Deferred Inc. Taxes (410.2)	234,272-277		
52	(Less) Provision for Deferred Income Taxes--Cr. (411.2)	234,272-277		
53	Investment Tax Credit Adjustment - Net (411.5)			
54	(Less) Investment Tax Credits (420)			
55	TOTAL Taxes on Other Income and Deductions (Enter Total of 48 thru 54)			
56	Net Other Income and Deductions (Enter Total of lines 41, 46, 55)			
57	Interest Charges			
58	Interest on Long-Term Debt (427)			
59	Amort. of Debt Disc. and Expense (428)			
60	Amortization of Loss on Reacquired Debt (428.1)			
61	(Less) Amortization of Premium on Debt-Credit (429)			
62	(Less) Amortization of Gain on Reacquired Debt-Credit (429.1)			
63	Interest on Debt to Assoc. Companies (430)	340		
64	Other Interest Expense (431)	340		
65	(Less) Allowance for Borrowed Funds Used During Construction--Cr. (432)			
66	Net Interest Charges (Enter Total of lines 58 thru 65)			
67	Income Before Extraordinary Items (Enter Total of lines 27, 56 and 66)			
68	Extraordinary Items			
69	Extraordinary income (434)			
70	(Less) Extraordinary Deductions (435)			
71	Net Extraordinary Items (Enter Total of line 69 less line 70)			
72	Income Taxes-Federal and Other (409.3)	262-263		
73	Extraordinary Items After Taxes (Enter Total *of line 71* less line 72)			
74	Net Income *(Enter Total of lines 67 and 73)*			

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -33-

(SUBSTITUTE PAGE FOR PART XX)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106)

1. Report below the original cost of electric plant in service according to the prescribed accounts.
2. In addition to Account 101, Electric Plant in Service (Classified), this page and the next include Account 102, Electric Plant Purchased or Sold; Account 103, Experimental Electric Plant Unclassified; and Account 106, Completed Construction Not Classified-Electric.
3. Include in column (c) or (d), as appropriate, corrections of additions and retirements for the current or preceding year.
4. For revisions to the amount of initial asset retirement costs capitalized, included by primary plant account, increases in column (c) additions and reductions in column (e) adjustments 5. Enclose in parentheses credit adjustments of plant accounts to indicate the negative effect of such accounts.
5. Classify Account 106 according to prescribed accounts, on an estimated basis if necessary, and include the entries in column (c). Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b). Likewise, if the respondent has a significant amount of plant retirements which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirements, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision. Include also in column (d) reversals of tentative distributions of prior year of unclassified retirements.

Line No	Account (a)	Balance at Beginning of year (b)	Addition (c)
1	1. INTANGIBLE PLANT		
2	(301) Organization		
3	(302) Franchises and Consents		
4	(303) Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of Lines 2, 3, and 4)		
6	2. PRODUCTION PLANT		
7	A. Steam Production Plant		
8	(310) Land and Land Rights		
9	(311) Structures and Improvements		
10	(312) Boiler Plant Equipment		
11	(313) Engines and Engine-Driven Generators		
12	(314) Tubogenerator Units		
13	(315) Accessory Electric Equipment		
14	(316) Misc. Power Plant Equipment		
15	(317) Asset Retirement Costs for Steam Production		
16	TOTAL Steam Production Plant (Enter Total of Lines 8 thru 15)		
17	B. Nuclear Production Plant		
18	(320) Land and Land Rights		
19	(321) Structures and Improvements		
20	(322) Reactor Plant Equipment		
21	(323) Turbo generator Units		
22	(324) Accessory Electric Equipment		
23	(325) Misc. Power Plant Equipment		
24	(326) Asset Retirement Costs for Nuclear Production		
25	TOTAL Nuclear Production Plant (Enter Total of Lines 18 thru 24)		
26	C. Hydraulic Production Plant		
27	(330) Land and Land Rights		
28	(331) Structures and Improvements		
29	(332) Reservoirs, Dams, and Waterways		
30	(333) Water Wheels, Turbines, and Generators		
31	(334) Accessory Electric Equipment		
32	(335) Misc. Power Plant Equipment		
33	(336) Roads, Railroad, and Bridges		
34	(337) Asset Retirement Costs for Hydraulic Production		
35	TOTAL Hydraulic Production Plant (Enter Total of Lines 27 thru 34)		
36	D. Other Production Plant		
37	(340) Land and Land Rights		
38	(341) Structures and Improvements		
39	(342) Fuel Holders, Products, and Accessories		
40	(343) Prime Movers		
41	(344) Generators		
42	(345) Accessory Electric Equipment		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -34-

(SUBSTITUTE PAGE FOR PART XX)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106) (Continued)

Show in a footnote the account distributions of these tentative classifications in columns (c) and (d), including the reversals of the prior years tentative account distributions of these amounts. Careful observance of the above instructions and the texts of Accounts 101 and 106 will avoid serious omissions of the reported amount of respondent's plant actually in service at end of year.

7. Show in column (f) reclassifications or transfers within utility plant accounts. Include also in column (f) the additions or reductions of primary account classifications arising from distribution of amounts initially recorded in Account 102, include in column (e) the amounts with respect to accumulated provision for depreciation, acquisition adjustments, etc., and show in column (f) only the offset to the debits or credits distributed in column (f) to primary account classifications.

8. For Account 399, state the nature and use of plant included in this account and if substantial in amount, footnote and provide a supplementary statement showing subaccount classification of such plant conforming to the requirement of these pages.

9. For each amount comprising the reported balance and changes in Account 102, state the property purchased or sold, name of vendor or purchase, and date of transaction. If proposed journal entries have been filed with the Commission as required by the Uniform System of Accounts, give also date of such filing.

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)		Line No.
					1
				(301)	2
				(302)	3
				(303)	4
					5
					6
					7
				(310)	8
				(311)	9
				(312)	10
				(313)	11
				(314)	12
				(315)	13
				(316)	14
				(317)	15
					16
					17
				(320)	18
				(321)	19
				(322)	20
				(323)	21
				(324)	22
				(325)	23
				(326)	24
					25
					26
				(330)	27
				(331)	28
				(332)	29
				(333)	30
				(334)	31
				(335)	32
				(336)	33
				(337)	34
					35
					36
				(340)	37
				(341)	38
				(342)	39
				(343)	40
				(344)	41
				(345)	42

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -35-

(SUBSTITUTE PAGE FOR PART XX)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106)

Line No	Account (a)	Balance at Beginning of year (b)	Addition (c)
43	(346) Misc. Power Plant Equipment		
44	(347) Asset Retirement Costs for Other Production		
45	TOTAL Other Production Plant (Enter Total of Lines 37 thru 44)		
46	TOTAL Production Plant (Enter Total of Lines 16, 25, 35, and 45)		
47	3. TRANSMISSION PLANT		
48	(350) Land and Land Rights		
49	(352) Structures and Improvements		
50	(353) Station Equipment		
51	(354) Towers and Fixtures		
52	(355) Poles and Fixtures		
53	(356) Overhead Conductors and Devices		
54	(357) Underground conduit		
55	(358) Underground Conductors and Devices		
56	(359) Roads and Trails		
57	(359.1) Asset Retirement Costs for Transmission Plant		
58	TOTAL Transmission Plant (Enter Total of Liens 44 thru 52)		
59	4. DISTRIBUTION PLANT		
60	(360) Land and Land Rights		
61	(361) Structures and Improvements		
62	(362) Station Equipment		
63	(363) Storage Battery Equipment		
64	(364) Poles, Towers, and Fixtures		
65	(365) Overhead Conductors and Devices		
66	(366) Underground Conduit		
67	(367) Underground Conductors and Devices		
68	(368) Line Transformers		
69	(369) Services		
70	(370) Meters		
71	(371) Installations on Customer Premises		
72	(372) Leased Property on Customer Premises		
73	(373) Street Lighting and Signal Systems		
74	(374) Asset Retirement Costs for Distribution Plant		
75	Total Distribution Plant (Enter Total of lines 60 thru 79)		
76	5. GENERAL PLANT		
77	(389) Land and Land Rights		
78	(390) Structures and Improvements		
79	(391) Office Furniture and Equipment		
80	(392) Transportation Equipment		
81	(393) Stores Equipment		
82	(394) Tools, Shop and Garage Equipment		
83	(395) Laboratory, Equipment		
84	(396)Power Operated Equipment		
85	(397) Communication Equipment		
86	(398) Miscellaneous Equipment		
87	SUBTOTAL (Enter Total of Lines 77 thru 86)		
88	(399) Other Tangible Property		
89	(399.1) Asset Retirement Costs for General Plant		
90	TOTAL General Plant (Enter Total of Lines 87, 88, and 89)		
91	TOTAL (Accounts 101 and 106) (Lines 5, 16, 25, 35, 45, 58, 75, and 90)		
92	(102) Electric Plant Purchased (See Instr. 8)		
93	(Less) (102) Electric Plant Sold (See Instr. 8)		
94	(103) Experimental Plant Unclassified		
95	TOTAL Electric Plant in Service (Enter Total of Lines 91 thru 94)		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -36-

(SUBSTITUTE PAGE FOR PART XX)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106) (Continued)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)		Line No.
				(346)	43
				(347)	44
					45
					46
					47
				(650)	48
				(352)	49
				(353)	50
				(354)	51
				(355)	52
				(356)	53
				(357)	54
				(358)	55
				(359)	56
				(359.1)	57
					58
					59
				(360)	60
				(361)	61
				(362)	62
				(363)	63
				(364)	64
				(365)	65
				(366)	66
				(367)	67
				(368)	68
				(369)	69
				(370)	70
				(371)	71
				(372)	72
				(373)	73
				(374)	74
					75
					76
				(389)	77
				(390)	78
				(391)	79
				(392)	60
				(393)	81
				(394)	82
				(395)	83
				(396)	84
				(397)	85
				(398)	86
					87
				(399)	88
				(399.1)	89
					90
					91
				(102)	92
					93
				(103)	94
					95

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -37-

(SUBSTITUTE PAGE FOR PART XII)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC UTILITY PLANT (Account 108)

1. Explain in a footnote any important adjustments during year.
2. Explain in a footnote any difference between the amount for book cost of plant retired, Line 11, column (c), and that reported for electric plant in service, pages 204-207, column 9d), excluding retirements of nondepreciable property.
3. The provisions of Account 108 in the Uniform System of accounts require that retirements of depreciable plant be recorded when such plant is removed from service.

If the respondent has a significant amount of plant retired at year end which has not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired. In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications.
4. Show separately interest credits under a sinking fund or similar method of depreciation accounting.

Section A. Balances and Changes During Year

Line No	Item (a)	Total (c+d+e) (b)	Electric Plant in Service (c)	Electric Plant Held for Future Use (d)	Electric Plant leased to Others (e)
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to				
3	(403) Depreciation Expense				
4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Expenses of Electric Plant Leased to Others				
6	Transportation Expenses - Clearing				
7	Other Clearing Accounts				
8	Other Accounts (Specify):				
9					
10	Total Depreciation Provision For Year (Enter Total of Lines 3 thru 9)				
11	Net Charges for Plant Retired:				
12	Book Cost of Plant Retired				
13	Cost of Removal				
14	Salvage (Credit)				
15	TOTAL Net Charges For Plant Retired (Enter Total of Lines 12 thru 14)				
16	Other Debit or Credit Items (Describe):				
17					
18	Book Cost of Asset Retirement Costs				
19	Balance End of Year (Enter Total of lines 1, 10, 15, 16, and 18)				

Section B. Balances at End of Year According to Functional Classifications

20	Steam Production				
21	Nuclear Production				
22	Hydraulic Production-Conventional				
23	Hydraulic Production-Pumped Storage				
24	Other Production				
25	Transmission				
26	Distribution				
27	General				
28	TOTAL (Enter Total of Lines 20 thru 27)				

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

LIST OF SCHEDULES (Natural Gas Company)

Enter in column (d) the terms "none," "not applicable," or "NA" as appropriate, where no information or amounts have been reported for certain pages Omit pages where the responses are "none," "not applicable," or "NA

Line No	Title of Schedule	Reference Page No (b)	Date Revised (c)	Remarks (d)
	GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS			
1	General Information	101		
2	Control Over Respondent	102		
3	Corporations Controlled by Respondent	103		
4	Security Holders and Voting Powers	107		
5	Important Changes During the Year	108		
6	Comparative Balance Sheet	110-113		
7	Statement of Income for the Year	114-116		
8	Statement of Retained Earnings for the Year	118-119		
9	Statements of Cash Flows	120-121		
10	Notes to Financial Statements	122		
	BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debits)			
11	Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization, and Depletion	200-201		
12	Gas Plant in Service	204-209		
13	Gas Property and Capacity Leased from Others	212		
14	Gas Property and Capacity Leased to Others	213		
15	Gas Plant Held for Future Use	214		
16	Construction Work in Progress-Gas	216		
17	General Description of Construction Overhead Procedure	218		
18	Accumulated Provision for Depreciation of Gas Utility Plant	219		
19	Gas Stored	220		
20	Investments	222-223		
21	Investments in Subsidiary Companies	224-225		
22	Prepayment	230		
23	Extraordinary Property Losses	230		
24	Unrecovered Plant and Regulatory Study Costs	230		
25	Other Regulatory Assets	232		
26	Miscellaneous Deferred Debits	233		
27	Accumulated Deferred Income Taxes	234-235		
	BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)			
28	Capital Stock	230-251		
29	Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock, and Installments Received on Capital Stock	252		
	Other Paid-in Capital	253		
30	Discount on Capital Stock	254		
31	Capital Stock Expense	254		
32	Securities issued or Assumed and Securities Refunded or Retired During the Year	255		
33	Long-Term Debt	256-257		
34	Unamortized Debt Expense, Premium, and Discount on Long-Term Debt	258-259		
35	Unamortized Loss and Gain on Reacquired Debt	260		
36	Reconciliation of Reported Net Income with Taxable Income for Federal Income Taxes	261		
37				

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -39-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

LIST OF SCHEDULES (Natural Gas Company)

Enter in column (d) the terms "none," "not applicable," or "NA" as appropriate, where no information or amounts have been reported for certain pages Omit pages where the responses are "none," "not applicable," or "NA

Line No	Title of Schedule	Reference Page No (b)	Date Revised (c)	Remarks (d)
	BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits) (Continued)			
38	Taxes Accrued, Prepaid, and Charged During Year	262-263		
39	Miscellaneous Current and Accrued Liabilities	268		
40	Other Deferred Credits	269		
41	Accumulated Deferred Income Taxes-Other Property	274-275		
42	Accumulated Deferred Income Taxes-Other	276-277		
43	Other Regulatory Liabilities	278		
	INCOME ACCOUNT SUPPORTING SCHEDULES			
44	Gas Operating Revenues	300-301		
45	Revenues from Transportation of Gas of Others Through Gathering Facilities	302-303		
46	Revenues from Transportation of Gas of Others Through Transmission Facilities	304-305		
47	Revenues from Storage Gas of Others	306-307		
48	Other Gas Revenues	308		
49	Gas Operation and Maintenance Expenses	317-325		
50	Exchange and Imbalance Transactions	328		
51	Gas Used in Utility Operations	331		
52	Transmission and Compression of Gas by Others	332		
53	Other Gas Supply Expenses	334		
54	Miscellaneous General Expenses-Gas	335		
55	Depreciation, Depletion, and Amortization of Gas Plant	336-338		
56	Particulars Concerning Certain income Deduction and Interest Charges Accounts	340		
	COMMON SECTION			
57	Regulatory Commission Expenses	350-351		
58	Distribution of Salaries and Wages	354-355		
59	Charges for Outside Professional and Other Consultative Services	357		
	GAS PLANT STATISTICAL DATA			
60	Compressor Stations	508-509		
61	Gas Storage Projects	512-513		
62	Transmission Lines	514		
63	Transmission System Peak Deliveries	518		
64	Auxiliary Peaking Facilities	519		
65	Gas Account-Natural Gas	520		
66	System Map	522		
67	Footnote Reference	551		
68	Footnote Text	552		
69	Stockholders' Reports (check appropriate box)			
	☐ Four copies will be submitted			
	☐ No annual report to stockholders is prepared			

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -40-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	*(Less)* Discount on Capital Stock (213)	254		
10	*(Less)* Capital Stock Expense (214)	254		
11	Retained Earnings (215, 215 1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216 1)	118-119		
13	*(Less)* Reacquired Capital (217)	250-251		
14	Accumulated Other Comprehensive Income (219)	118 (a) (b)		
15	TOTAL Proprietary Capital (Total of line 2 thru 14)			
16	LONG TERM DEBT			
17	Bonds (221)	256-257		
18	*(Less)* Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	258-259		
22	(Less) Unamortized Discount on Long-Term Debt-Dr (226)	258-259		
23	(Less) Current Portion of Long-Term Debt			
24	TOTAL Long-Term Debt (Total of lines 17 thru 23)			
25	OTHER NONCURRENT LIABILITIES			
26	Obligations Under Capital Leases -- Noncurrent (227)			
27	Accumulated Provision for Property Insurance (228 1)			
28	Accumulated provision for Injuries and Damages (228 2)			
29	Accumulated Provision for Pensions and Benefits (228 3)			
30	Accumulated Miscellaneous Operating Provision (228 4)			
31	Accumulated Provision for Rate Refunds (229)			
32	Asset Retirement Obligations (230)			
33	TOTAL Other Noncurrent Liabilities (total of lines 26 thru 32)			

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -41-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS) (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
34	CURRENT AND ACCRUED LIABILITIES			
35	Current Portion of Long-Term Debt			
36	Notes Payable (231)			
37	Accounts Payable (232)			
38	Notes Payable to Associated Companies (233)			
39	Accounts Payable to Associated Companies (234)			
40	Customer Deposits (235)			
41	Taxes Accrued (236)	262-263		
42	Interest Accrued (237)			
43	Dividends Declared (238)			
44	Matured Long-Term Debt (239)			
45	Matured Interest (240)			
46	Tax Collections Payable (241)			
47	Miscellaneous Current and Accrued Liabilities (242)	268		
48	Obligations Under Capital Leases -- Current (243)			
49	Derivative Instrument Liabilities (244)			
50	Derivative Instrument Liabilities - Hedges (245)			
51	TOTAL Current and Accrued Liabilities (Total of lines 35 thru 50)			
52	DEFERRED CREDITS			
53	Customer Advances for Construction (252)			
54	Accumulated Deferred Investment Tax Credits (255)			
55	Deferred Gains from Disposition of Utility Plant (256)			
56	Other Deferred Credits (253)	269		
57	Other Regulatory Liabilities (254)	278		
58	Unamortized Gain on Reacquired Debt (257)	260		
59	Accumulated Deferred Income Taxes (281-283)			
60	TOTAL Deferred Credits (Total of lines 53 thru 59)			
61	TOTAL Liabilities and Other Credits (Total of lines 15, 24, 33, 51, and 60)			

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

STATEMENT OF INCOME FOR THE YEAR

1 Report amounts for accounts 412 and 413, *Revenue and Expenses from Utility Plant Leased to Others,* in another utility column (i,j) in a similar manner to a utility department Spread the amount(s) over lines 2 thru 24 as appropriate Include these amounts in columns (c) and (d) totals

2 Report amounts in discount 414, *Other Utility Operating Income,* in the same manner as accounts 412 and 413 above

3 Report data for lines 7, 9, and 10 for Natural Gas companies using accounts 404.1, 404.2, 404.3, 407 1, and 407. 2

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	UTILITY OPERATING INCOME			
2	Gas Operating Revenues (400}	300-301		
3	Operating Expenses			
4	Operation Expenses (401)	317-325		
5	Maintenance Expenses (402)	317-325		
6	Depreciation Expenses (403)	336-338		
7	Depreciation Expense for Asset Retirement Costs (403.1)	336-338		
8	Amortization and Depletion of Utility Plant (404-405)	336-338		
9	Amortization of Utility Plant Acu Adjustment (406)	336-338		
10	Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs (407.1)			
11	Amortization of Conversion Expenses (407 2)			
12	Regulatory Debits (407 3)			
13	(Less) Regulatory Credits (407 4)			
14	Taxes Other than Income Taxes (408 1)	262-263		
15	Income Taxes -- Federal (409 1)	262-263		
16	Income Taxes -- Other (409 1)	262-263		
17	Provision of Deferred Income Taxes (410 1)	234-235		
18	(Less) Provision for Deferred Income Taxes -- Credit (411 1)	234-235		
19	Investment Tax Credit Adjustment -- Net (411 4)			
20	(Less) Gains from Disposition of Allowances (411 6)			
21	Losses from Disposition of Utility Plant (411 7)			
22	(Less) Gains from Disposition of Allowances (411 8)			
23	Losses from Disposition of Allowances (411 9)			
24	Accretion Expense (411.10)			
25	TOTAL Utility Operating Expenses (Total of lines 4 thru 24)			
26	Net Utility Operating Income (Total of lines 2 less 24) (Carry forward to page 116, line 27)			

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

STATEMENT OF INCOME FOR THE YEAR (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
27	Net Utility Operating Income (Carrier forward from page 114)			
28	OTHER INCOME AND DEDUCTIONS			
29	Other Income			
30	Nonutility Operating Income			
31	Revenues form Merchandising, Jobbing and Contract Work (415)			
32	*(Less)* Costs and Expenses of Merchandising, Jobbing & Contract Work (416)			
33	Revenues from Nonutility Operations (417)			
34	*(Less)* Expenses of Nonutility Operations (417.1)			
35	Nonoperating Rental Income			
36	Equity in Earnings of Subsidiary Companies (418.1)	119		
37	Interest and Dividend Income (419)			
38	Allowance for Other Funds Used During Construction (419.1)			
39	Miscellaneous Nonoperating Income (421)			
40	Gain on Disposition of Property (421.1)			
41	TOTAL Other Income (Total of lines 31 thru 40)			
42	Other Income Deductions			
43	Loss on Disposition of Property (421.2)			
44	Miscellaneous Amortization (425)			
45	Miscellaneous Income Deductions (426.1 thru 426.5)	340		
46	TOTAL Other Income Deductions (Total of lines 43 thru 45)	340		
47	Taxes Applicable to Other Income and Deductions			
48	Taxes Other than Income Taxes (406.2)	262-263		
49	Income Taxes -- Federal (409.2)	262-263		
50	Income Taxes -- Other (409.2)	262-263		
51	Provision for Deferred Income Taxes (410.2)	234-235		
52	*(Less)* Provision for Deferred Income Taxes- Credit (411.2)	234-235		
53	Investment Tax Credit Adjustments--Net (411.5)			
54	*(Less)* Investment Tax Credits (420)			
55	TOTAL Taxes on Other Income and Deductions (Total of lines 48-54)			
56	Net Other Income and Deductions (Total of lines 41, 46, and 55)			
57	INTEREST CHARGES			
58	Interest on Long-Term Debt (427)			
59	Amortization of Debt Discount and Expense (428)	258-259		
60	Amortization of Loss on Reacquired Debt (428.1)			
61	*(Less)* Amortization of Premium on Debt-Credit (429)	258-259		
62	*(Less)* Amortization of Gain on Reacquired Debt- Credit (429.1)			
63	Interest on Debt to Associated Companies (430)	340		
64	Other Interest Expense (431)	340		
65	(Less) Allowance for Borrowed Funds Used During Construction-Credit (432)			
66	Net Interest Charges (Total of line 58 thru 65)			
67	Income Before Extraordinary Items (Total of lines 27, 56 and 66)			
68	EXTRAORDINARY ITEMS			
69	Extraordinary Income (434)			
70	*(Less)* Extraordinary Deductions (435)			
71	Net Extraordinary Items (Total of line 69 less 70)			
72	Income Taxes--Federal and Other (409.3)	262-263		
73	Extraordinary Items after Taxes (Total of line 71 less line 72)			
74	Net Income (Total of lines 67 and 73)			

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -44-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106)

1. Report below the original cost of gas plant in service according to the prescribed accounts.
2. In addition to Account 101, *Gas Plant in Service (Classified)*, this page and the next include Account 102, Gas Plant Purchased or Sold, Account 103, Experimental Gas Plant Unclassified, and Account 106, Complete Construction Not Classified-Gas.
3. Include in column © and (d), as appropriate corrections of additions and retirements for the current or preceding year.
4. Include subsequent measurement revisions to the asset retirement costs capitalized in column (e) adjustments.
5. Enclose in parenthesis credit adjustments of plant accounts to indicate the negative effect of such accounts.
6. Classify Account 106 according to prescribed accounts, on an estimated basis if necessary, and include the entries in column (c). Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b). Like wise, if the respondent has a significant amount of plant retirement which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirement, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision. Include also in column (d) reversals of tentative distributions of prior year's unclassified retirement. Attach supplemental statement showing the account distributions of these tentative classifications in column (c) and (d).

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
1	INTANGIBLE PLANT		
2	301 Organization		
3	302 Franchises and Consents		
4	303 Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of lines 2 thru 4)		
6	PRODUCTION PLANT		
7	Natural Gas Production and Gathering Plant		
8	325.1 Producing Lands		
9	325.2 Producing Leaseholds		
10	325.3 Gas Rights		
11	325.4 Rights-of-Way		
12	325.5 Other Land and Land Rights		
13	326 Gas Well Structures		
14	327 Field Compressor Station Structures		
15	328 Field Measuring and Regulating Station Equipment		
16	329 Other Structures		
17	330 Producing Gas Wells-Well Construction		
18	331 Producing Gas Wells-Well Equipment		
19	332 Field Lines		
20	333 Field Compressor Station Equipment		
21	334 Field Measuring and Regulating Station Equipment		
22	335 Drilling and Cleaning Equipment		
23	336 Purification Equipment		
24	337 Other Equipment		
25	338 Unsuccessful Exploration and Development Costs		
26	339 Asset Retirement Costs for Natural Gas Production and Gathering Plant		
27	TOTAL Production and Gathering Plant (Enter Total of lines 8 thru 26)		
28	PRODUCTS EXTRACTION PLANT		
29	340 Land and Land Rights		
30	341 Structures and Improvements		
31	342 Extraction and Refining Equipment		
32	343 Pipe Lines		
33	344 Extracted Products Storage Equipment		
34	345 Compressor Equipment		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -45-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106) (Continued)

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
35	346 Gas Measuring and Regulating Equipment		
36	347 Other Equipment		
37	348 Asset Retirement Costs for Products Extraction Plant		
38	TOTAL Products Extraction Plant (Enter Total of lines 29 thru 37)		
39	TOTAL Natural Gas Production Plant (Enter Total of lines 27 and 38)		
40	Manufactured Gas Production Plant *(Submit Supplementary Statement)*		
41	TOTAL Production Plant (Enter Total of lines 39 and 40)		
42	NATURAL GAS STORAGE AND PROCESSING PLANT		
43	Underground Storage Plant		
44	350.1 Land		
45	350.2 Rights-of-Way		
46	351 Structures and Improvements		
47	352 Wells		
48	352.1 Storage Leaseholds and Rights		
49	352.2 Reservoirs		
50	352.3 Non-recoverable Natural Gas		
51	353 Lines		
52	354 Compressor Station Equipment		
53	355 Measuring and Regulating Equipment		
54	356 Purification Equipment		
55	357 Other Equipment		
56	358 Asset Retirement Costs for Underground Storage Plant		
57	TOTAL Underground Storage Plant (Enter Total of lines 43 thru 56)		
58	359 Other Storage Plant		
59	360 Land and Land Rights		
60	361 Structures and Improvements		
61	362 Gas Holders		
62	363 Purification Equipment		
63	363.1 Liquefaction Equipment		
64	363.2 Vaporizing Equipment		
65	363.2 Compressor Equipment		
66	363.4 Measuring and Regulating Equipment		
67	363.5 Other Equipment		
68	363.6 Asset Retirement Costs for Other Storage Plant		
69	TOTAL Other Storage Plant (Enter Total of lines 58 thru 68)		
70	Base Load Liquefied Natural Gas Terminaling and Processing Plant		
71	364.1 Land and Land Rights		
72	364.2 Structures and Improvements		
73	364.3 LNG Processing Terminal Equipment		
74	364.4 LNG Transportation Equipment		
75	364.5 Measuring and Regulating Equipment		
76	364.6 Compressor Station Equipment		
77	364.7 Communications Equipment		
78	364.8 Other Equipment		
79	364.9 Asset Retirement Costs for Base Load Liquefied Natural Gas Terminaling and Processing Plant		
80	TOTAL Base Load Liquefied Natural Gas Terminaling and Processing Plant (Lines 71 thru 79)		
81	TOTAL Natural Gas Storage and Processing Plant (Total of lines 57, 69 and 80)		
82	TRANSMISSION PLANT		
83	365,1 Land and Land Rights		
84	365.2 Right-of-Way		
85	366 Structures and Improvements		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -46-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106) (Continued)

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
86	367 Mains		
87	368 Compressor Station Equipment		
88	369 Measuring and Regulating Station Equipment		
89	370 Communication Equipment		
90	371 Other Equipment		
91	372 Asset Retirement Costs for Transmission Plant		
92	TOTAL Transmission Plant (Enter Totals of lines 83 thru 91)		
93	DISTRIBUTION PLANT		
94	374 Land and Land Rights		
95	375 Structures and Improvements		
96	376 Mains		
97	377 Compressor Station Equipment		
98	378 Measuring and Regulating Station Equipment-General		
99	379 Measuring and Regulating Station Equipment-City Gate		
100	380 Services		
101	381 Meters		
102	382 Meter Installations		
103	383 House Regulators		
104	384 House Regulator Installations		
105	385 Industrial Measuring and Regulating Station Equipment		
106	386 Other Property on Customers' Premises		
107	387 Other Equipment		
108	388 Asset Retirement Costs for Distribution Plant		
109	TOTAL Distribution Plant (Enter Total of lines 94 thru 108)		
1110	GENERAL PLANT		
111	389 Land and Land Rights		
112	390 Structures and Improvements		
113	391 Office Furniture and Equipment		
114	392 transportation Equipment		
115	393 Stores Equipment		
116	394 Tools, Shop, and Garage Equipment		
117	395 Laboratory Equipment		
118	396 Power Operated Equipment		
119	397 Communication Equipment		
120	398 Miscellaneous Equipment		
121	Subtotal (Enter Total of lines 111 thru 120)		
122	399 Other Tangible Property		
123	399.1 Asset Retirement Costs for General Plant		
124	TOTAL General Plant (Enter Total of lines 121, 122 and 123)		
125	TOTAL (Accounts 101 and 106)		
126	Gas Plant Purchased (See Instruction 8)		
127	*(Less)* Gas Plant Sold (See Instruction 8)		
128	Experimental Gas Plant Unclassified		
129	TOTAL Gas Plant in Service (Enter Total of lines 125 thru 128)		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -47-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

ACCUMULATED PROVISION FOR DEPRECIATION OF GAS UTILITY PLANT (ACCOUNT 108)

1 Explain in a footnote any important adjustments during year
2 Explain in a footnote any difference between the amount for book cost of plant retired, line 10, column (c), and that reported for gas plant in service, page 204-209, column (d), excluding retirements of nondepreciable property
3 The provisions of Account 108 in the Uniform System of Accounts require that retirements of depreciable plant be recorded when such plant is removed from service If the respondent has a significant amount of plant retired at year end which had not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications
4 Show separately interest credits under a sinking fund or similar method of depreciation accounting
5 At lines 8 and 15, add rows as necessary to report all data Additional rows should be numbered in sequence, e g, 8. 01, 8.02, etc.

Line No	Item (a)	Total (c + d + e) (b)	Gas Plant in Service (c)	Gas Plant Held for Future Use (d)	Gas Plant Leased to Others (e)
	Section A. BALANCES AND CHANGES DURING YEAR				
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to				
3	(403) Depreciation Expense				
4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Expense of Gas Plant Leased to Others				
6	Transportation Expenses - Clearing				
7	Other Clearing Accounts				
8	Other Clearing (Specify):				
8.01					
9	TOTAL Depreciation Provision For Year (Total of Lines 3 thru 8)				
10	Net Charges for Plant Retired:				
11	Book Cost of Plant Retired				
12	Cost of Removal				
13	Salvage (Credit)				
14	TOTAL Net Charges for Plant Retirements (Total of Lines 11 thru13)				
15	Other Debit or Credit Items (Describe):				
15.01					
16	Book Cost of Asset Retirement Costs				
17	Balance End of Year (Total of lines 1, 9, 14, 15, and16)				
	Section B. BALANCES AT END OF YEAR ACCORDING TO FUNCTIONAL CLASSIFICATIONS				
18	Productions-Manufactured Gas				
19	Production and Gathering -Natural Gas				
20	Products Extraction-Natural Gas				
21	Underground Gas Storage				
22	Other Storage Plant				
23	Base Load LNG Terminating and Processing Plant				
24	Transmission				
25	Distribution				
26	General				
27	TOTAL (Total of lines 18 thru 26)				

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -48-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

DEPRECIATION, DEPLETION, AND AMORTIZATION OF GAS PLANT (ACCOUNTS 403, 403.1, 404 1, 404 2, 404 3, 405)*(Except Amortization of Acquisition Adjustments)*

1 Report in Section A the amounts of depreciation expense depletion and amortization for the accounts indicated and classified according to t he plant functional groups shown

2 Report in Section B, column (b) all depreciable or amortizable plant balances to which rates are applied and show a composite total (If more desirable, report by plant account, subaccount or functional classifications other than those pre-printed in column (a) Indicate in a footnote the manner in which column (b) balances are

Section A. Summary of Depreciation, Depletion, and Amortization Charges

Line No	Functional Classification (a)	Depreciation Expense (Account 403) (b)	Depreciation Expense for Asset Retirement Costs (Account 403.1) (c)	Amortization and Depletion of Production Natural Gas Land and Land Rights (Account 404.1) (d)	Amortization of Underground Storage Land and Land Rights (Account 404.2) (e)
1	Intangible plant				
2	Production plant, manufactured gas				
3	Production and gathering plant, natural gas				
4	Products extraction plant				
5	Underground gas storage plant				
6	Other storage plant				
7	Base load LNG terminaling and processing plant				
8	Transmission plant				
9	Distribution plant				
10	General plant				
11	Common plant-gas				
12	TOTAL				

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

DEPRECIATION, DEPLETION, AND AMORTIZATION OF GAS PLANT (ACCOUNTS 403, 403.1 404 1, 404 2, 404 3, 405) *(Except Amortization of Acquisition Adjustments)* (Continued)

obtained If average balances are used, state the method of averaging used For column (c) report available information for each plant functional classification listed in column (a) If composite depreciation accounting is used, report available information called for in columns (b) and (d) on this basis Where the unit-of-production method is used to determine depreciation charges, shown in a footnote any revisions made to estimated gas reserves.

3 If provisions for depreciation were made during the year in addition to depreciation provided by application of reported rates, state in a footnote the amounts and nature of the provisions and the plant items to which related.

Section A. Summary of Depreciation, Depletion, and Amortization Charges

Amortization of Other Limited-term Gas Plant (Account 404 3) (f)	Amortization of Other Gas Plant (Account 405) (g)	Total (b to g) (h)	Functional Classification (a)	Line No
			Intangible plant	1
			Production plant, manufactured gas	2
			Production and gathering plant, natural gas	3
			Products extraction plant	4
			Underground gas storage plant	5
			Other storage plant	6
			Base Load LNG terminaling and processing plant	7
			Transmission plant	8
			Distribution plant	9
			General plant	10
			Common plant-gas	11
			TOTAL	12

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -50-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of R eport (Mo, Da, Yr)	Year of Report Dec 31, _____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	*(Less)* Discount on Capital Stock (213)	254		
10	*(Less)* Capital Stock Expense (214)	254		
11	Retained Earnings (215, 215 1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216.1)	118-119		
13	*(Less)* Reacquired Capital (217)	250-251		
14	Accumulated Other Comprehensive Income (219)	117		
15	TOTAL Proprietary Capital (Total of line 2 thru 14)			
16	LONG TERM DEBT			
17	Bonds (221)	256-257		
18	*(Less)* Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	258-259		
22	(Less) Unamortized Discount on Long-Term Debt-Dr (226)	258-259		
23	(Less) Current Portion of Long-Term Debt			
24	TOTAL Long-Term Debt (Total of lines 17 thru 23)			
25	OTHER NONCURRENT LIABILITIES			
26	Obligations Under Capital Leases -- Noncurrent (227)			
27	Accumulated Provision for Property Insurance (228.1)			
28	Accumulated provision for Injuries and Damages (228.2)			
29	Accumulated Provision for Pensions and Benefits (228.3)			
30	Accumulated Miscellaneous Operating Provision (228.4)			
31	Accumulated Provision for Rate Refunds (229)			
32	Asset Retirement Obligations (230)			
33	TOTAL Other Noncurrent Liabilities (Total of lines 26 thru 32)			

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
34	CURRENT AND ACCRUED LIABILITIES			
35	Current Portion of Long-Term Debt			
36	Notes Payable (231)			
37	Accounts Payable (232)			
38	Notes Payable to Associated Companies (233)			
39	Accounts Payable to Associated Companies (234)			
40	Customer Deposits (235)			
41	Taxes Accrued (236)	262-263		
42	Interest Accrued (237)			
43	Dividends Declared (238)			
44	Matured Long-Term Debt (239)			
45	Matured Interest (240)			
46	Tax Collections Payable (241)			
47	Miscellaneous Current and Accrued Liabilities (242)	268		
48	Obligations Under Capital Leases -- Current (243)			
49	Derivative Instrument Liabilities (244)			
50	Derivative Instrument Liabilities - Hedges (245)			
51	TOTAL Current and Accrued Liabilities (Total of lines 35 thru 50)			
52	DEFERRED CREDITS			
53	Customer Advances for Construction (252)			
54	Accumulated Deferred Investment Tax Credits (255)			
55	Deferred Gains from Disposition of Utility Plant (256)			
56	Other Deferred Credits (253)	269		
57	Other Regulatory Liabilities (254)	278		
58	Unamortized Gain on Reacquired Debt (257)	260		
59	Accumulated Deferred Income Taxes (281-283)			
60	TOTAL Deferred Credits (Total of lines 53 thru 59)			
61	TOTAL Liabilities and Other Credits (Total of lines 15, 24, 33, 51, and 60)			

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

STATEMENT OF INCOME FOR THE YEAR

1 Report amounts for accounts 412 and 413, *Revenue and Expenses from Utility Plant Leased to Others*, in another utility column (i,j) in a similar manner to a utility department Spread the amount(s) over lines 2 thru 26 as appropriate Include these amounts in columns (c) and (d) totals

2 Report amounts in discount 414, *Other Utility Operating Income*, in the same manner as accounts 412 and 413 above

3 Report data for lines 7, 9, and 10 for Natural Gas companies using accounts 404 1, 404 2, 404.3, 407.1, and 407.2

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	UTILITY OPERATING INCOME			
2	Gas Operating Revenues (400)	300-301		
3	Operating Expenses			
4	Operation Expenses (401)	317-325		
5	Maintenance Expenses (402)	317-325		
6	Depreciation Expense (403)	336-338		
7	Depreciation Expense for Asset Retirement Costs (403.1)	336-338		
8	Amortization and Depletion of Utility Plant (404-405)	336-338		
9	Amortization of Utility Plant Acquisition Adjustment (406)	336-338		
10	Amort of Prop Losses, Unrecovered Plant and Reg Study Costs (407.1)			
11	Amortization of Conversion Expenses (407.2)			
12	Regulatory Debits (407.3)			
13	(Less) Regulatory Credits (407.4)			
14	Taxes Other than Income Taxes (408.1)	262-263		
15	Income Taxes -- Federal (409.1)	262-263		
16	Income Taxes -- Other (409.1)	262-263		
17	Provision of Deferred Income Taxes (410.1)	234-235		
18	(Less) Provision for Deferred Income Taxes -- Credit (411.1)	234-235		
19	Investment Tax Credit Adjustment -- Net (411.4)			
20	(Less) Gains from Disposition of Allowances (411.6)			
21	Losses from Disposition of Utility Plant (411.7)			
22	(Less) Gains from Disposition of Allowances (411.8)			
23	Losses from Disposition of Allowances (411.9)			
24	Accretion Expense (411.10)			
25	TOTAL Utility Operating Expenses (Total of lines 4 thru 24)			
26	Net Utility Operating Income (Total of lines 2 less 25) (Carry forward to page 116, line 27)			

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

STATEMENT OF INCOME FOR THE YEAR (Continued)

4 Explain in a footnote if the previous year's figures are different from those reported in prior reports

5 If the columns are insufficient for reporting additional utility departments, supply the appropriate account titles, lines 2 to 26, and report the information on page 122 or in a supplemental statement.

Electric Utility Current Yea (in dollars)	Electric Utility Previous Year (in dollars)	Gas Utility Current Year (In dollars)	Gas Utility Current Year (in dollars)	Other Utility Current Tear (in dollars)	Other Utility Previous Year (in dollars)	
						1
						2
						3
						4
						5
						6
						7
						8
						9
						10
						11
						12
						13
						14
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						24
						25
						26

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -54-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

STATEMENT OF INCOME FOR THE YEAR (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
27	Net Utility Operating Income (Carrier forward from page 114)			
28	OTHER INCOME AND DEDUCTIONS			
29	Other Income			
30	Nonutility Operating Income			
31	Revenues form Merchandising, Jobbing and Contract Work (415)			
32	*(Less)* Costs and Expense of Merchandising, Job & Contract Work (415.1)			
33	Revenues from Nonutility Operations (417)			
34	*(Less)* Expenses of Nonutility Operations (417.1)			
35	Nonoperating Rental Income			
36	Equity in Earnings of Subsidiary Companies (418.1)	119		
37	Interest and Dividend Income (419)			
38	Allowance for Other Funds Used During Construction (419.1)			
39	Miscellaneous Nonoperating Income (421)			
40	Gain on Disposition of Property (421.1)			
41	TOTAL Other Income (Total of lines 29 thru 40)			
42	Other Income Deductions			
43	Loss on Disposition of Property (421 2)			
44	Miscellaneous Amortization (425)			
45	Miscellaneous Income Deductions (426.1 thru 426.5)	340		
46	TOTAL Other Income Deductions (Total of lines 43 thru 45)	340		
47	Taxes Applicable to Other Income and Deductions			
48	Taxes Other than Income Taxes (406.2)	262-263		
49	Income Taxes -- Federal (409.2)	262-263		
50	Income Taxes -- Other (409.2)	262-263		
51	Provision for Deferred Income Taxes (410.2)	234-235		
52	*(Less)* Provision for Deferred Income Taxes-Credit (410. 2)	234-235		
53	Investment Tax Credit Adjustments--Net (411.5)			
54	*(Less)* Investment Tax Credits (420)			
55	TOTAL Taxes on Other Income and Deductions (Total of lines 48-54)			
56	Net Other Income and Deductions (Total of lines 41, 46, and 55)			
57	INTEREST CHARGES			
58	Interest on Long-Term Debt (427)			
59	Amortization of Debt Disc and Expense (428)	258-259		
60	Amortization of Loss on Reacquired Debt (428.1)			
61	*(Less)* Amortization of Premium on Debt-Credit (429)	258-259		
62	*(Less)* Amortization of Gain on Reacquired Debt-Credit (429.1)			
63	Interest on Debt to Associated Companies (430)	340		
64	Other Interest Expense (431)	340		
65	(Less) Allowance for Borrowed Funds Used During Construction- Credit			
66	Net Extraordinary Items (Total of line 69 less line70)			
67	Income Before Extraordinary Items (Total of lines 27, 56 and 66)			
68	EXTRAORDINARY ITEMS			
69	Extraordinary Income (434)			
70	*(Less)* Extraordinary Deductions (435)			
71	Net Extraordinary Items (Total of line 69 less 70)			
72	Income Taxes--Federal and Other (409.3)	262-263		
73	Extraordinary Items after Taxes (Total of line 71 less line 72)			
74	Net Income (Total of lines 67and 73)			

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -55-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106)

1 Report below the original cost of gas plant in service according to the prescribed accounts.
2 In addition to Account 101, *Gas Plant in Service (Classified)*, this page and the next include Account 102, Gas Plant Purchased or Sold, Account 103, Experimental Gas Plant Unclassified, and Account 106, Completed Construction Not Classified-Gas.
3 Include in column (c) and (d), as appropriate corrections of additions and retirements for the current or preceding year
4. For subsequent measurement revisions to initial asset retirement costs capitalized include any net increase or net decrease amount by primary plant account for the asset retirement costs in column (c) additions.
4 Enclose in parenthesis credit adjustments of plant accounts to indicate the negative effect of such accounts

5 Classify Account 106 according to prescribed accounts, on an estimated basis if necessary, and include the entries in column (c) Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b) Like wise, if the respondent has a significant amount of plant retirement which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirement, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision Include also in column (d) reversals of tentative distributions of prior year's unclassified retirement Attach supplemental statement showing the account distributions of these tentative classifications in column (c) and (d),

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
1	INTANGIBLE PLANT		
2	301 Organization		
3	302 Franchises and Consents		
4	303 Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of lines 2 thru 4)		
6	PRODUCTION PLANT		
7	Natural Gas Production and Gathering Plant		
8	325.1 Producing Lands		
9	325.2 Producing Leaseholds		
10	325.3 Gas Rights		
11	325.4 Rights-of-Way		
12	325.5 Other Land and Land Rights		
13	326 Gas Well Structures		
14	327 Field Compressor Station Structures		
15	328 Field Measuring and Regulating Station Equipment		
16	329 Other Structures		
17	330 Producing Gas Wells-Well Construction		
18	331 Producing Gas Wells-Well Equipment		
19	332 Field Lines		
20	333 Field Compressor Station Equipment		
21	334 Field Measuring and Regulating Station Equipment		
22	335 Drilling and Cleaning Equipment		
23	336 Purification Equipment		
24	337 Other Equipment		
25	338 Unsuccessful Exploration and Development Costs		
26	339 Asset Retirement Costs for Natural Gas Production & Gathering Plant		
27	TOTAL Production and Gathering Plant (Enter Total of lines 8 thru 26)		
28	PRODUCTS EXTRACTION PLANT		
29	340 Land and Land Rights		
30	341 Structures and Improvements		
31	342 Extraction and Refining Equipment		
32	343 Pipe Lines		
33	344 Extracted Products Storage Equipment		
34	345 Compressor Equipment		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -56-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106 (Continued)

including the reversals of the prior years tentative account distributions of these amounts Careful observance of the above instructions and the texts of Account 101 and 106 will avoid serious omissions of respondent's reported amount for plant actually in service at end of year.

7. Show in column (f) reclassifications or transfers within utility plant accounts Include also in column (f) the additions or reductions of primary account classifications arising from distribution of amounts initially recorded in Account 102. In showing the clearance of Account 102, include in column (e) the amounts with respect to accumulated provision for depreciation, acquisition adjustments, etc., And show in column (f) only the offset to the debits or credits to primary account classifications

8. For Account 399, state the nature and use of plant included in this account and if substantial in amount submit a supplementary statement showing subaccount classification of such plant conforming to the requirements of these pages

9. For each amount comprising the reported balance and changes in Account 102, state the property purchased or sold, name of vendor or purchaser, and date of transaction If proposed journal entries have been filed with the commission as required by the Uniform System of Accounts, give date of such filing.

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)	Line No
				1
				2
				3
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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -57-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106) (Continued)

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
35	346 Gas Measuring and Regulating Equipment		
36	347 Other Equipment		
37	348 Asset Retirement Costs for Products Extraction Plant		
38	TOTAL Products Extraction Plant (Enter Total of lines 29 thru 37)		
39	TOTAL Natural Gas Production Plant (Enter Total of lines 27 and 38)		
40	Manufactured Gas Production Plant *(Submit Supplementary Statement)*		
41	TOTAL Production Plant (Enter Total of lines 39 and 40)		
42	NATURAL GAS STORAGE AND PROCESSING PLANT		
43	Underground Storage Plant		
44	350.1 Land		
45	350.2 Rights-of-Way		
46	351 Structures and Improvements		
47	352 Wells		
48	352.1 Storage Leaseholds and Rights		
49	352.2 Reservoirs		
50	352.3 Non-recoverable Natural Gas		
51	353 Lines		
52	354 Compressor Station Equipment		
53	355 Measuring and Regulating Equipment		
54	356 Purification Equipment		
55	357 Other Equipment		
56	358 Asset Retirement Costs for Underground Storage Plant		
57	TOTAL Underground Storage Plant (Enter Total of lines 44 thru 56)		
58	Other Storage Plant		
59	360 Land and Land Rights		
60	361 Structures and Improvements		
61	362 Gas Holders		
62	363 Purification Equipment		
63	363.1 Liquefaction Equipment		
64	363.2 Vaporizing Equipment		
65	363.2 Compressor Equipment		
66	363.4 Measuring and Regulating Equipment		
67	363.5 Other Equipment		
68	363.6 Asset Retirement Costs for Other Storage Plant		
69	TOTAL Other Storage Plant (Enter Total of lines 59 thru 68)		
70	Base Load Liquefied Natural Gas Terminating and Processing Plant		
71	364.1 Land and Land Rights		
72	364.2 Structures and Improvements		
73	364.3 LNG Processing Terminal Equipment		
74	364.4 LNG Transportation Equipment		
75	364.5 Measuring and Regulating Equipment		
76	364.6 Compressor Station Equipment		
77	364.7 Communications Equipment		
78	364.8 Other Equipment		
79	364.9 Asset Retirement Costs for Base Load Liquefied Natural Gas Terminaling and Processing Plant		
80	TOTAL Base Load Liquefied Natural Gas, Terminating and Processing Plant (Lines 71 thru 79)		
81	TOTAL Natural Gas Storage and Processing Plant (Total of lines 57, 69 and 80)		
82	TRANSMISSION PLANT		
83	365.1 Land and Land Rights		
84	365.2 Rights-of-Way		
85	366 Structures and Improvements		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -58-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106) (Continued)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)	Line No
				35
				36
				37
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				40
				41
				42
				43
				44
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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -59-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106) (Continued)

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
86	367 Mains		
87	368 Compressor Station Equipment		
88	369 Measuring and Regulating Station Equipment		
89	370 Communication Equipment		
90	371 Other Equipment		
91	372 Asset Retirement Costs for Transmission Plant		
92	TOTAL Transmission Plant (Enter Totals of lines 83 thru 91)		
93	DISTRIBUTION PLANT		
94	374 Land and Land Rights		
95	375 Structures and Improvements		
96	376 Mains		
97	377 Compressor Station Equipment		
98	378 Measuring and Regulating Station Equipment-General		
99	379 Measuring and Regulating Station Equipment-City Gate		
100	380 Services		
101	381 Meters		
102	382 Meter Installations		
103	383 House Regulators		
104	384 House Regulator Installations		
105	385 Industrial Measuring and Regulating Station Equipment		
106	386 Other Property on Customers' Premises		
107	387 Other Equipment		
108	388 Asset Retirement Costs for Distribution Plant		
109	TOTAL Distribution Plant (Enter Total of lines 94 thru 108)		
110	GENERAL PLANT		
111	389 Land and Land Rights		
112	390 Structures and Improvements		
113	391 Office Furniture and Equipment		
114	392 transportation Equipment		
115	393 Stores Equipment		
116	394 Tools, Shop, and Garage Equipment		
117	395 Laboratory Equipment		
118	396 Power Operated Equipment		
119	397 Communication Equipment		
120	398 Miscellaneous Equipment		
121	Subtotal (Enter Total of lines 111 thru 120)		
122	399 Other Tangible Property		
123	399.1 Asset Retirement Costs for General Plant		
124	TOTAL General Plant (Enter Total of lines 121, 122 and 123)		
125	TOTAL (Accounts 101 and 106)		
126	Gas Plant Purchased (See Instruction 8)		
127	*(Less)* Gas Plant Sold (See Instruction 8)		
128	Experimental Gas Plant Unclassified		
129	TOTAL Gas Plant in Service (Enter Total of lines 125 thru 128)		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -60-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106 (Continued)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)	Line No
				86
				87
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				91
				92
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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -61-

Name of Respondent	This Report is: ☐ An Origina ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

ACCUMULATED PROVISION FOR DEPRECIATION OF GAS UTILITY PLANT (ACCOUNT 108)

1 Explain in a footnote any important adjustments during year
2 Explain in a footnote any difference between the amount for book cost of plant retired, line 10, column (c), and that reported for gas plant in service, page 204-209, column (d), excluding retirements of nondepreciable property.
3 The provisions of Account 108 in the Uniform System of Accounts require that retirements of depreciable plant be recorded when such plant is removed from service If the respondent has a significant amount of plant retired at year end which had not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications
4 Show separately interest credits under a sinking fund or similar method of depreciation accounting
5 At lines 7 and 14, add rows as necessary to report all data Additional rows should be numbered in sequence, e g, 7.01, 7.02, etc.

Line No	Item (a)	Total (c + d + e) (b)	Gas Plant in Service (c)	Gas Plant Held for Future Use (d)	Gas Plant Leased to Others (e)
	Section A. BALANCES AND CHANGES DURING YEAR				
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to				
3	(403) Depreciation Expense				
4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Expense of Gas Plant Leased to Others				
6	Transportation Expenses - Clearing				
7	Other Clearing Accounts				
8	Other Clearing (Specify):				
8.01					
9	TOTAL Depreciation Provision For Year (Total of lines 3 thru 7)				
10	Net Charges for Plant Retired:				
11	Book Cost of Plant Retired				
12	Cost of Removal				
13	Salvage (Credit)				
14	TOTAL Net Charges for Plant Ret. (Total of lines 11 thru 13)				
15	Other Debit or Credit Items (Describe):				
15.01					
16	Book Cost of Asset Retirement Costs Retired				
17	Balance End of Year (Total of lines 1, 9, 14, 15 and 16)				
	Section B. BALANCES AT END OF YEAR ACCORDING TO FUNCTIONAL CLASSIFICATIONS				
18	Productions-Manufactured Gas				
19	Production and Gathering -Natural Gas				
20	Products Extraction-Natural Gas				
21	Underground Gas Storage				
22	Other Storage Plant				
23	Base Load LNG Terminating and Processing Plant				
24	Transmission				
25	Distribution				
26	General				
27	TOTAL (Total of lines 18 thru 26)				

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -62-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

LIST OF SCHEDULES

Enter in column (d) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the responses are "none," "not applicable," or "NA."

Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS			
General Information	101	ED 12-91	
Control Over Respondent	102	REV 12-95	
Companies Controlled by Respondent	103	NEW 12-95	
Principal General Officers	104	ED 12-91	
Directors	105	REV 12-95	
Important Changes During the Year	108-109	REV 12-95	
Comparative Balance Sheet Statement	110-113	REV 12-02	
Income Statement	114	REV 12-02	
Statement of Accumulated Comprehensive Income and Hedging Activities	115 (a) (b)	NEW 12-02	
Appropriated Retained Income	118	REV 12-95	
Unappropriated Retained Income Statement	119	REV 12-95	
Dividend Appropriations of Retained Income	119	REV 12-95	
Statement of Cash Flows	120-121	REV 12-95	
Notes to Financial Statements	122-123	REV 12-95	
BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debts)			
Receivables From Affiliated Companies	200	REV 12-00	
General Instructions Concerning Schedules 202 thru 205	201	REV 12-95	
Investments in Affiliated Companies	202-203	ED 12-91	
Investments in Common Stocks of Affiliated Companies	204-205	ED 12-91	
Companies Controlled Directly by Respondent Other Than Through Title to Securities	204-205	ED 12-02	
Instructions for Schedules 212 Thru 217	211	REV 12-00	
Carrier Property	212-213	REV 12-02	
Undivided Joint Interest Property	214-215	REV 12-02	
Accrued Depreciation-Carrier Property	216	REV 12-02	
Accrued Depreciation-Undivided Joint Interest Property	217	REV 12-02	
Amortization Base and Reserve	218-219	REV 12-02	
Noncarrier Property	220	REV 12-00	
Other Deferred Charges	221	REV 12-00	
BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)			
Payables to Affiliated Companies	225	REV 12-00	
Long-Term Debt	226-227	ED 12-00	
Analysis of Federal Income and Other Taxes Deferred	230-231	REV 12-00	
Capital Stock	250-251	REV 12-95	
Capital Stock Changes During the Year	252-253	ED 12-91	
Additional Paid-in Capital	254	ED 12-87	

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

COMPARATIVE BALANCE SHEET STATEMENT - LIABILITIES (Continued)

For instructions covering this schedule, see the text and instructions pertaining to Balance Sheet Accounts in the USofA. The entries in this balance sheet should be consistent with those in the supporting schedules on the pages indicated.

Line No.	Item (a)	Reference Page No. (b)	Balance at End of Current Year (In dollars) (c)	Balance at End of Previous Year (In dollars) (d)
	CURRENT LIABILITIES			
47	Notes Payable (50)			
48	Payables to Affiliated Companies (51)			
49	Accounts Payable (52)			
50	Salaries and Wages Payable (53)			
51	Interest Payable (54)			
52	Dividends Payable (55)			
53	Taxes Payable (56)			
54	Long - Term Debt - Payable Within One Year (57)	226-227		
55	Other Current Liabilities (58)			
56	Deferred Income Tax Liabilities (59)	230-231		
57	TOTAL Current Liabilities *(Total of lines 47 thru 56)*			
	NONCURRENT LIABILITIES			
58	Long-Term Debt - Payable After One Year (60)	226-227		
59	Unamortized Premium on Long-Term Debt (61)			
60	(Less) Unamortized Discount on Long-Term Debt-Dr. (62)			
61	Other Noncurrent Liabilities (63)			
62	Accumulated Deferred Income Tax Liabilities (64)	230-231		
63	Derivative Instrument Liabilities (65)			
64	Derivative Instrument Liabilities - Hedges (66)			
65	Asset Retirement Obligations (67)			
66	TOTAL Noncurrent Liabilities *(Total of lines 58 thru 65)*			
67	TOTAL Liabilities *(Total of lines 57 and 66)*			
	STOCKHOLDERS' EQUITY			
68	Capital Stock (70)	250-251		
69	Premiums on Capital Stock (71)			
70	Capital Stock Subscriptions (72)			
71	Additional Paid-In Capital (73)	254		
72	Appropriated Retained Income (74)	118		
73	Unappropriated Retained Income (75)	119		
74	(Less) Unrealized Loss on Noncarrier Marketable Equity-Securities (75.5)			
75	(Less) Treasury Stock (76)			
76	TOTAL Stockholders' Equity *(Total of lines 68 thru 75)*			
77	TOTAL Liabilities and Stockholders' Equity *(Total of lines 67 and 76)*			

INSTRUCTIONS FOR SCHEDULES 212-213

1.) Give an analysis of changes during the year in Account No. 30, *Carrier Property*, by carrier property accounts, excluding investments in undivided joint interest property reported on pages 214 and 215. The total carrier property reported on page 213 (column i, line 44) and the total undivided joint interest property reported on all pages 215 (column i, line 44) should represent all carrier property owned by the reporting entity at year end.

2.) Enter in column (c) the cost of newly constructed property, additions, and improvements made to existing property. Include amounts distributed to carrier property accounts during the year which were previously charged to Account No. 187, *Construction Work in Progress*. In column (d) enter expenditures for existing pipeline property purchased or otherwise acquired. Enter in column (e) - property sold, abandoned, or otherwise retired during the year. This will generally be a positive number, so that the calculation in column (f) works properly.

3.) If pipeline operating property was acquired from or sold to some other company during the year, footnote the acquisition or sale if it exceeded $250,000. Include the following in the footnote: the name of the company the property was acquired from or sold to, the mileage acquired or sold, and the date of acquisition or sale. Include termini, the original cost of property acquired from an affiliate or other common carrier (see Instruction 3-1, Property acquired, Instructions for Carrier Property Accounts in Uniform System of Accounts), and the cost of the property to the respondent. Also give the amount debited or credited to each company account representing such property acquired or disposed of.

4.) Enter in column (g) for each account the net of all other accounting adjustments, transfers, and clearances applicable to prior years' accounting.

5.) Explain fully each adjustment, clearance, or transfer in excess of $500,000 in a footnote. Explain transfers to or from Account No. 34, *Noncarrier Property*, in Schedule 219.

6.) Indicate in parenthesis any entry in columns (f), (g), or (h) which represents an excess of credits over debits.

INSTRUCTIONS FOR SCHEDULES 214-215

1.) Give an analysis of changes during the year in Account No. 30, *Carrier Property*, by carrier property accounts, for investments in undivided joint interest property. The respondent will only report its portion of the carrier property of any undivided joint interest pipeline in which it has an interest. If the respondent owns an interest in multiple undivided joint interest pipelines, prepare and submit a separate schedule 214-215 for each undivided joint interest pipeline in which it has an interest. If multiple schedules 214-215 are submitted, number all schedules subsequent to the first with a number and letter page designator (For example ... 214, 215; 214a, 215a; 214b, 215b; etc...).

2.) Enter in column (c) the cost of newly constructed property, additions, and improvements made to existing property. Include amounts distributed to carrier property accounts during the year which were previously charged to Account No. 187*Construction Work in Progress*. In column (d) enter expenditures for existing pipeline property purchased or otherwise acquired. Enter in column (e) property sold, abandoned, or otherwise retired during the year. This will generally be a positive number so that the calculation in column (f) works properly.

3.) If pipeline operating property was acquired from or sold to some other company during the year, footnote the acquisition or sale if it exceeded $250,000. Include the following in the footnote: the name of the company the property was acquired from or sold to, the mileage acquired or sold, and the date of acquisition or sale. Include termini, the original cost of property acquired from an affiliate or other common carrier (see Instruction 3-1, Property acquired, Instructions for Carrier Property Accounts in Uniform System of Accounts), and the cost of the property to the respondent. Also give the amount debited or credited to each company account representing such property acquired or disposed of.

4.) Enter in column (g) for each account the net of all other accounting adjustments, transfers, and clearances applicable to prior years' accounting.

5.) Explain fully each adjustment, clearance, or transfer in excess of $500,000 in a footnote. Explain transfers to or from Account No. 34, *Noncarrier Property*, in Schedule 219.

6.) Indicate in parenthesis any entry in columns (f), (g), or (h) which represents an excess of credits over debits.

INSTRUCTIONS FOR SCHEDULES 216-217

1.) On schedule 216, give an analysis of changes during the year in Account No. 31, *Accrued Depreciation - Carrier Property*, by carrier property accounts, excluding depreciation on undivided joint interest property reported on page 217.

On schedule 217, give an analysis of changes during the year in Account No. 31, *Accrued Depreciation - Carrier Property*, by carrier property accounts for property owned as part of an undivided joint interest pipeline. If the respondent owns an interest in multiple undivided joint interest pipelines, prepare and submit a separate schedule 217 for each undivided joint interest pipeline in which it has an interest. If multiple schedules 217 are submitted, number all schedules subsequent to the first with a number and letter page designator (For example ... 217, 217a, 217b, etc...).

2.) In column (c), enter debits by carrier property account to Account No. 540, *Depreciation and Amortization*, and 541, *Depreciation Expense for Asset Retirement Costs* , during the year.

3.) In column (d), enter all debits to Account No. 31, *Accrued Depreciation - Carrier Property*, during the year resulting from the retirement of carrier property.

4.) In column (e), enter the net of any other debits and credits made to Account No. 31, *Accrued Depreciation - Carrier Property*, during the year.

5.) If composite annual depreciation rates are prescribed, enter those in effect at the end of the year in column (g). If component rates are prescribed, the composite rates entered in column (g) should be computed from the charges developed for December by using the prescribed component rates. Whether component or composite rates are prescribed, the entries on lines 17, 34, 42, and 43 of column (g) should be computed from December depreciation charges.

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -65-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

CARRIER PROPERTY

Line No.	Account (a)	Balance at Beginning of Year (In dollars) (b)	PROPERTY CHANGES DURING THE YEAR (In dollars): Expenditures for New Construction, Additions, and Improvements (c)	Expenditures for Existing Property Purchased or Otherwise Acquired (d)
	GATHERING LINES			
1	Land (101)			
2	Right of Way (102)			
3	Line Pipe (103)			
4	Line Pipe Fittings (104)			
5	Pipeline Construction (105)			
6	Buildings (106)			
7	Boilers (107)			
8	Pumping Equipment (108)			
9	Machine Tools and Machinery (109)			
10	Other Station Equipment (110)			
11	Oil Tanks (111)			
12	Delivery Facilities (112)			
13	Communication Systems (113)			
14	Office Furniture and Equipment (114)			
15	Vehicles and Other Work Equipment (115)			
16	Other Property (116)			
17	Asset Retirement Costs for Gathering Lines (117)			
18	TOTAL *(Lines 1 thru 17)*			
	TRUNK LINES			
19	Land (151)			
20	Right of Way (152)			
21	Line Pipe (153)			
22	Line Pipe Fittings (154)			
23	Pipeline Construction (155)			
24	Buildings (156)			
25	Boilers (157)			
26	Pumping Equipment (158)			
27	Machine Tools and Machinery (159)			
28	Other Station Equipment (160)			
29	Oil Tanks (161)			
30	Delivery Facilities (162)			
31	Communication Systems (163)			
32	Office Furniture and Equipment (164)			
33	Vehicles and Other Work Equipment (165)			
34	Other Property (166)			
35	Asset Retirement Costs for Trunk Lines (167)			
36	TOTAL *(Lines 19 thru 35)*			
	GENERAL			
37	Land (171)			
38	Buildings (176)			
39	Machine Tools and Machinery (179)			
40	Communication Systems (183)			
41	Office Furniture and Equipment (184)			
42	Vehicles and Other Work Equipment (185)			
43	Other Property (186)			
44	Asset Retirement Costs for General Property (186.1)			
45	Construction Work in Progress (187)			
46	TOTAL (Lines 37 thru 45)			
47	GRAND TOTAL (Lines 18, 36 and 46)			

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -66-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

CARRIER PROPERTY (Continued)

PROPERTY CHANGES DURING					
Property Sold, Abandoned, or Otherwise Retired During the Year *(e)*	Net (c + d - e) *(f)*	Other Adjustments, Transfers and Clearances *(In dollars)* *(g)*	Increase or Decrease During the Year (f ± g) *(In dollars)* *(h)*	Balance at End of Year (b ± h) *(In dollars)* *(i)*	Line No.
					1
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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -67-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

UNDIVIDED JOINT INTEREST PROPERTY

Name of Undivided Joint Interest Pipeline:

Line No.	Account (a)	Balance at Beginning of Year (in dollars) (b)	PROPERTY CHANGES DURING THE YEAR (In dollars) Expenditures for New Construction, Additions, and Improvements (c)	Expenditures for Existing Property Purchased or Otherwise Acquired (d)
	GATHERING LINES			
1	Land (101)			
2	Right of Way (102)			
3	Line Pipe (103)			
4	Line Pipe Fittings (104)			
5	Pipeline Construction (105)			
6	Buildings (106)			
7	Boilers (107)			
8	Pumping Equipment (108)			
9	Machine Tools and Machinery (109)			
10	Other Station Equipment (110)			
11	Oil Tanks (111)			
12	Delivery Facilities (112)			
13	Communication Systems (113)			
14	Office Furniture and Equipment (114)			
15	Vehicles and Other Work Equipment (115)			
16	Other Property (116)			
17	Asset Retirement Costs for Gathering Lines (117)			
18	TOTAL *(Lines 1 thru 17)*			
	TRUNK LINES			
19	Land (151)			
20	Right of Way (152)			
21	Line Pipe (153)			
22	Line Pipe Fittings (154)			
23	Pipeline Construction (155)			
24	Buildings (156)			
25	Boilers (157)			
26	Pumping Equipment (158)			
27	Machine Tools and Machinery (159)			
28	Other Station Equipment (160)			
29	Oil Tanks (161)			
30	Delivery Facilities (162)			
31	Communication Systems (163)			
32	Office Furniture and Equipment (164)			
33	Vehicles and Other Work Equipment (165)			
34	Other Property (166)			
35	Asset Retirement Costs for Trunk Lines (167)			
36	TOTALS *(Lines 19 thru 35)*			
	GENERAL			
37	Land (171)			
38	Buildings (176)			
39	Machine Tools and Machinery (179)			
40	Communication Systems (183)			
41	Office Furniture and Equipment (184)			
42	Vehicles and Other Work Equipment (185)			
43	Other Property (186)			
44	Asset Retirement Costs for General Property (186.1)			
45	Construction Work in Progress (187)			
46	TOTAL *(Lines 37 thru 45)*			
47	GRAND TOTAL *(Lines 18, 36, and 46)*			

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -68-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

UNDIVIDED JOINT INTEREST PROPERTY (Continued)

PROPERTY CHANGES DURING THE YEAR (In dollars)					
Property Sold, Abandoned, or Otherwise Retired During the Year (e)	Net (c+d-e) (f)	Other Adjustments, Transfers, and Clearances (In dollars) (g)	Increase or Decrease During the Year (f ± g) (In dollars) (h)	Balance at End of Year (b + h) (In dollars) (i)	Line No.
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Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

ACCRUED DEPRECIATION - CARRIER PROPERTY
(EXCLUSIVE OF DEPRECIATION ON UNDIVIDED JOINT INTEREST PROPERTY REPORTED IN SCHEDULE 217)

Give particulars (details) of the credits and debits to Account No. 31, *Accrued Depreciation - Carrier Property,* during the year.

Line No.	Account (a)	Balance at Beginning of Year (In dollars) (b)	Debits to Accounts No. 540 and 541 of USofA (In dollars) (c)	Net Debit From Retirement of Carrier Property (In dollars) (d)	Other Debits and Credits-Net (In dollars) (e)	Balance at End of Year (b + c + d + e) (In dollars) (f)	Annual Composite/ Component Rates (In percent) (g)
	GATHERING LINES						
1	Right of Way (102)						
2	Line Pipe (103)						
3	Line Pipe Fittings (104)						
4	Pipeline Construction (105)						
5	Buildings (106)						
6	Boilers (107)						
7	Pumping Equipment (108)						
8	Machine Tools and Machinery (109)						
9	Other Station Equipment (110)						
10	Oil Tanks (111)						
11	Delivery Facilities (112)						
12	Communication Systems (113)						
13	Office Furniture and Equip (114)						
14	Vehicles and Other Work Equip (115)						
15	Other Property (116)						
16	Asset Retirement Costs for Gathering Lines (117)						
17	TOTAL *(Lines 1 thru 16)*						
	TRUNK LINES						
18	Right of Way (152)						
19	Line Pipe (153)						
20	Line Pipe Fittings (154)						
21	Pipeline Construction (155)						
22	Buildings (156)						
23	Boilers (157)						
24	Pumping Equipment (158)						
25	Machine Tools and Machinery (159)						
26	Other Station Equipment (160)						
27	Oil Tanks (161)						
28	Delivery Facilities (162)						
29	Communication Systems (163)						
30	Office Furniture and Equip (164)						
31	Vehicles and Other Work Equip (165)						
32	Other Property (166)						
33	Asset Retirement Costs for Trunk Lines (167)						
34	TOTAL *(Lines 18 thru 33)*						
	GENERAL						
35	Buildings (176)						
36	Machine Tools and Machinery (179)						
37	Communication Systems (183)						
38	Office Furniture and Equip (184)						
39	Vehicles and Other Work Equip (185)						
40	Other Property (186)						
41	Asset Retirement Costs for General Property (186.1)						
42	TOTAL *(Lines 35 thru 41)*						
43	GRAND TOTAL *(Lines 17, 34, 42)*						

Name of Respondent	This Report Is: (1) □ An Original (2) □ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

ACCRUED DEPRECIATION - UNDIVIDED JOINT INTEREST PROPERTY

Give particulars (details) of the credits and debits to Account No. 31, *Accrued Depreciation - Carrier Property*, during the year.

Name of Undivided Joint Interest Pipeline:

Line No.	Account (a)	Balance at Beginning of Year (In dollars) (b)	Debits to Accounts No. 540 and 541 of USofA (In dollars) (c)	Net Debit From Retirement of Carrier Property (In dollars) (d)	Other Debits and Credits-Net (In dollars) (e)	Balance at End of Year (b + c + d + e) (In dollars) (f)	Annual Composite/ Component Rates (In percent) (g)
	GATHERING LINES						
1	Right of Way (102)						
2	Line Pipe (103)						
3	Line Pipe Fittings (104)						
4	Pipeline Construction (105)						
5	Buildings (106)						
6	Boilers (107)						
7	Pumping Equipment (108)						
8	Machine Tools and Machinery (109)						
9	Other Station Equipment (110)						
10	Oil Tanks (111)						
11	Delivery Facilities (112)						
12	Communication Systems (113)						
13	Office Furniture and Equip. (114)						
14	Vehicles and Other Work Equip. (115)						
15	Other Property (116)						
16	Asset Retirement Costs for Gathering Lines (117)						
17	TOTAL *(Lines 1 thru 16)*						
	TRUNK LINES						
18	Right of Way (152)						
19	Line Pipe (153)						
20	Line Pipe Fittings (154)						
21	Pipeline Construction (155)						
22	Buildings (156)						
23	Boilers (157)						
24	Pumping Equipment (158)						
25	Machine Tools and Machinery (159)						
26	Other Station Equipment (160)						
27	Oil Tanks (161)						
28	Delivery Facilities (162)						
29	Communication Systems (163)						
30	Office Furniture and Equip. (164)						
31	Vehicles and Other Work Equip. (165)						
32	Other Property (166)						
33	Asset Retirement Costs for Trunk Lines (167)						
34	TOTAL (Lines 18 thru 33)						
	GENERAL						
35	Buildings (176)						
36	Machine Tools and Machinery (179)						
37	Communication Systems (183)						
38	Office Furniture and Equip. (184)						
39	Vehicles and Other Work Equip. (185)						
40	Other Property (186)						
41	Asset Retirement Costs for General Property (186.1)						
42	TOTAL (Lines 35 thru 41)						
43	GRAND TOTAL *(Lines 17, 34, 42)*						

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

AMORTIZATION BASE AND RESERVE

1.) Enter in columns (b) thru (e) the cost of pipeline property used as the base in computing amortization charges included in Account 540, *Depreciation and Amortization*, and Account 541, *Depreciation Expense for Asset Retirement Costs* of the accounting company.

2.) Enter in columns (f) thru (i) the balances at the beginning and end of the year and the total credits and debits during the year in Account No. 32, *Accrued Amortization - Carrier Property*.

3.) The information requested for columns (b) thru (i) may be shown by projects or for totals only.

4.) If reporting by project, briefly describe in a foot-

Line No.	Items (a)	BASE (540 and 541) Balance at Beginning of Year (In dollars) (b)	Debits During Year (In dollars) (c)	Credits During Year (In dollars) (d)	Balance at End of Year (In dollars) (e)
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46					
47	TOTAL				

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

AMORTIZATION BASE AND RESERVE (Continued)

note each project amounting to $100,000 or more. Reference the kind of property reported; do not include location. Items less than $100,000 may be combined in a single entry titled Minor items, each less than $100,000.

5.) If the amounts in column (g) do not correspond to the amounts actually charged to Account No. 540 and/or 541, explain such differences in a footnote.

6.) Explain in a footnote adjustments included in column (h) that affect operating expenses.

RESERVE (32)				
Balance at Beginning of Year (In dollars) (f)	Credits During Year (In dollars) (g)	Debits During Year (In dollars) (h)	Balance at End of Year (In dollars) (i)	Line No.
				1
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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -73

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

OPERATING EXPENSE ACCOUNTS (Account 610)

Report the respondent's pipeline operating expenses for the year, classifying them in accordance with the USofA.

Line No.	Operating Expense Accounts (a)	CRUDE OIL (In dollars) Gathering (b)	Trunk (c)	Delivery (d)	Total (b + c + d) (e)
	OPERATIONS and MAINTENANCE				
1	Salaries and Wages (300)				
2	Materials and Supplies (310)				
3	Outside Services (320)				
4	Operating Fuel and Power (330)				
5	Oil Losses and Shortages (340)				
6	Rentals (350)				
7	Other Expenses (390)				
8	TOTAL Operations and Maintenance Expenses				
	GENERAL				
9	Salaries and Wages (500)				
10	Materials and Supplies (510)				
11	Outside Services (520)				
12	Rentals (530)				
13	Depreciation and Amortization (540)				
14	Depreciation Expense for Asset Retirement Costs (541)				
15	Employee Benefits (550)				
16	Insurance (560)				
17	Casualty and Other Losses (570)				
18	Pipeline Taxes (580)				
19	Other Expenses (590)				
20	Accretion Expense (591)				
21	Gains or losses on Asset Retirement Obligations (592)				
22	TOTAL General Expenses				
23	GRAND TOTALS				

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

OPERATING EXPENSE ACCOUNTS (Continued)

Line No.	Products (in dollars)			
	Trunk (f)	Delivery (g)	Total (f+g) (h)	Grand Total (e+h) (I)
1				
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[FR Doc. 02–28294 Filed 11–18–02; 8:45 am]
BILLING CODE 6717–01–C

Federal Register

Tuesday,
November 19, 2002

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1032

Milk in the Central Marketing Area; Tentative Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreement and to Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[Doc. No. AO–313–A44; DA–01–07]

Milk in the Central Marketing Area; Tentative Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This tentative decision adopts, on an interim final and emergency basis, provisions that amend certain features of the pooling standards of the Central Federal milk order. Specifically, this tentative decision adopts amendments to the *Pool plant* provisions which: Establish lower but year-round supply plant performance standards; will not consider the volume of milk shipments to distributing plants regulated by another Federal milk order as a qualifying shipment on the Central order; exclude from receipts diverted milk made by a pool plant to another pool plant in determining pool plant diversion limits; and establish a ''net shipments'' provision for milk deliveries to distributing plants. This decision recommends adopting provisions to limit supply plant system formation, but not on an emergency basis. For *Producer milk,* this tentative decision adopts amendments that: Establish higher year-round diversion limits; will base diversion limits for supply plants on deliveries to Central order distributing plants; and eliminate the ability to simultaneously pool milk on the Central milk order and a State-operated milk order that has marketwide pooling. Public comments on these actions and the other pooling and payment issues not adopted by this tentative decision are requested. Additionally, this decision requires determination of whether producers approve the issuance of the amended order on an interim basis.

DATES: Comments are due on or before January 21, 2003.

ADDRESSES: Comments (6 copies) should be filed with the Hearing Clerk, United States Department of Agriculture, Room 1083—Stop 9200, 1400 Independence Avenue, SW., Washington, DC 20250–9200.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Room 2968, 1400 Independence Avenue, SW., STOP 0231, Washington, DC 20250–0231, (202) 690–1366, e-mail address: *gino.tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

These amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Approximately 9,695 of the 10,108 dairy producers (farmers), or 95.9 percent, whose milk was pooled under the Central Federal milk order at the time of the hearing, November 2001, would meet the definition of small businesses. On the processing side, approximately 10 of the 56 milk plants associated with the Central milk order during November 2001 would qualify as ''small businesses,'' constituting about 17.9 percent of the total.

Based on these criteria, more than 95 percent of the producers would be considered as small businesses. The adoption of the proposed pooling standards serves to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with, and are consistently serving the fluid needs of, the Central milk marketing area and are not associated with other marketwide pools concerning the same milk. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and, by doing so, determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This notice does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data

used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Prior documents in this proceeding:

Notice of Hearing: Issued October 17, 2001; published October 23, 2001 (66 FR 53551).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this tentative final decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Central marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Room 1083—Stop 9200, 1400 Independence Avenue, SW., Washington, DC 20250–9200, by January 21, 2003. Six (6) copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. While no evidence was received that specifically addressed these issues, some of the evidence encompassed entities of various sizes.

The proposed amendments set forth below are based on the record of a public hearing held at Kansas City, Missouri, on November 14–15, 2001, pursuant to a notice of hearing issued October 17, 2001, and published October 23, 2001 (66 FR 53551).

The material issues on the record of the hearing relate to:

1. Pooling Standards:

a. Supply plant pooling standards.

b. Cooperative supply plant performance standards.

c. Supply plant system standards.

d. Standards applicable for Producer milk.

e. Establishing pooling standards for ''State units.''

2. Simultaneous pooling of milk on the order and on a State-operated milk order providing for marketwide pooling.

3. Rate of partial payments to producers.

4. Determining whether emergency marketing conditions exist that would warrant the omission of a recommended decision and the opportunity to file written exceptions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pooling Standards of the Order

a. Supply Plant Pooling Standards

Several amendments to the pooling provisions of the Central order should be adopted immediately. Certain inadequacies of the supply plant pooling provisions are resulting in disorderly marketing conditions and the unwarranted erosion of the blend price received by those producers who are consistently providing milk to meet the fluid demands of the Central marketing area. Specifically, the following amendments for pool supply plants should be adopted immediately: (1) Lower the performance standards to 20 percent in each of the months of August through February and 15 percent in each of the months of March through July. Accordingly, automatic pool plant status during the 3-month period of May through July is thereby eliminated from the order; (2) Eliminate the volume of milk shipments made by supply plants to distributing plants regulated by another Federal milk marketing order as qualifying shipments in meeting the Central supply plant shipping standard; (3) Exclude from receipts the diversions made by a pool plant to a second pool plant from the calculation of the diversion limits established for pool plants; and (4) Provide a ''net shipments'' standard for supply plant deliveries to the order's distributing plants for the purpose of meeting the Central order's supply plant shipping standard. Expanding pool supply plant qualification to include milk shipments to any plant that is part of a distributing plant unit is not adopted.

The Central order currently provides a supply plant performance standard whereby 35 percent of the milk received directly from dairy farms and cooperative handlers must be transferred or diverted to distributing plants, including milk diverted by the plant operator, during each of the months of September through November and January. For all other months a 25 percent standard applies.

The Central marketing order currently provides automatic pool plant status during the 3-month period of May through July for supply plants provided they were pool plants during each of the immediately preceding months of August through April. The order does not currently include a performance standard which considers shipments to any plant that is part of a distributing plant unit as a qualifying shipment. The current order does not limit supply plant shipments to distributing plants on a ''net shipments'' basis.

In addition, handlers may currently qualify supply plants as pool plants located inside or outside the market area by diverting milk to a pool distributing plant regulated by the Central order. Supply plant transfers to distributing plants regulated by another Federal order currently are considered as qualifying shipments for the purpose of determining if the Central supply plant shipping standard has been met.

These amendments to the supply plant pooling standards were presented in testimony related to a proposal published in the hearing notice as Proposal 1. This proposal was offered by Dairy Farmers of America (DFA), Prairie Farms Cooperative (Prairie Farms), and Swiss Valley Farms (Swiss Valley). These organizations are cooperative associations that historically have pooled milk on the Central milk order or one of the nine orders consolidated to form the Central milk order. Hereinafter, this decision will refer to these proponents as ''DFA, *et al.*'' All three cooperative associations have ownership interests in fluid milk processing plants. Prairie Farms and Swiss Valley operate fluid plants.

Amendments to the supply plant pooling standards were offered, the proponents assert, because the pooling provisions of the order are not appropriately linking the ability to pool milk on the order with demonstrating consistent service in supplying the fluid needs of the market. DFA, *et al.*, proposed changing the seasonally adjusted performance standard for supply plants to 25 percent during each of the months of August through November and to 20 percent for each of the months of December through July.

Adopting these standards would also eliminate automatic pool plant status for the 3-month period of May through July currently provided by the order.

Proposal 1 as offered would no longer consider milk deliveries to distributing plants regulated by another Federal milk marketing order as qualifying shipments for determining if the supply plant performance standard for the Central Order had been met. Similarly, the proposal would not consider milk deliveries to distributing plants that are part of a distributing plant unit as qualifying shipments for determining if the supply plant performance standard had been met.

Proposal 1 also would limit a handler's ability to qualify supply plants located outside the Central Order marketing area as pool plants through direct deliveries of milk to pool distributing plants. The proposal also calls for establishing a ''net shipments'' provision. A net shipments standard would exclude from a supply plant's qualifying shipments any transfer or diversion of bulk fluid milk products made by a distributing plant receiving a qualifying shipment.

In support for Proposal 1, the DFA, *et al.*, witness testified that the orderly marketing of milk requires appropriate performance standards for supply plants to ensure that distributing plants are adequately supplied with milk as a condition for receiving the Central order's blend price. The witness explained that performance standards should require a level of association to a market by demonstrating the ability to supply the Class I needs of that market. The witness testified that milk located far from the market also should have performance standards that are workable and consistent with Federal order policy. According to the witness, the current practice of using direct deliveries from farms to distributing plants located inside the marketing area as a method to qualify plants located outside of the Central order marketing area as pool supply plants is inappropriate because milk pooled in this manner does not provide any reasonable service to the Class I needs of the market.

According to the DFA, *et al.*, witness, the reform of Federal milk orders provided unique pooling standards that apply to each market on an individual basis. The witness testified that during the reform process, the more lenient performance standard was often selected for the new consolidated orders. According to the witness, such standards are proving to be inappropriate for the larger consolidated Central milk marketing order.

As evidence that milk is being inappropriately pooled on the order, the DFA, *et al.*, witness noted that at the time of implementing Federal milk order reform, the consolidated Central order was expected to have Class I use of nearly 50 percent. Instead, Class I use is averaging below 30 percent, the witness noted. The witness was of the opinion that this shortfall in projected Class I use was due to pooling much more milk from sources outside the marketing area than could be explained by consolidating the nine pre-reform orders into the current Central order. The DFA, *et al.*, witness asserted that milk order reform did not intend to provide for pooling milk supplies on the Central order that would not also provide a consistent and reliable service to the Class I needs of the market. Stressing that such milk does not provide a consistent and reliable service to the Class I needs of the market, the witness maintained that such milk should not be pooled on the Central order and receive the order's blend price.

The DFA, *et al.*, witness testified that the ability of handlers to pool large volumes of milk from distant sources without having to actually deliver the milk to the market has resulted in a significant reduction of the blend price received by producers who are serving the market's Class I needs. The witness also asserted that some Central order fluid handlers are having difficulties in obtaining sufficient milk supplies and find themselves competing for a supply of milk with other fluid handlers regulated under adjacent orders where blend prices are higher.

The DFA, *et al.*, witness also explained that a portion of the pre-reform Southwest Plains order area had contributed a significant share of the milk supply needed for fluid use in the southeastern portion of the current Central marketing area. Much of the milk produced in Arkansas and southern Missouri became part of the milk supply for the Southeast order area, added the DFA, *et al.*, witness. The witness was of the opinion that adoption of Proposal 1 would result in a higher blend price for the Central order dairy farmers and enhance the ability of local Class I handlers to procure local milk supplies.

A DFA, *et al.*, witness from Prairie Farms testified that the significantly higher blend prices paid to producers under the neighboring Southeast and Appalachian orders are attracting milk supplies located in the southern and southeastern areas of the Central marketing area. The witness observed that these producers receive a higher price for their milk without incurring a significant change in hauling costs. The witness indicated that this situation is resulting in distributing plants needing to pay substantial over-order premiums to obtain a supply of milk for distribution in the Central marketing area.

Witnesses representing several distributing plant operators confirmed that they are experiencing problems obtaining an adequate supply of milk for fluid use, especially during the fall months. These fluid handlers supported the adoption of Proposal 1 because the link between milk pooled on the Central order needs to be tied to actual deliveries of milk to the order's pool distributing plants.

A witness from Anderson-Erickson (A–E), a distributing plant operator regulated by the Central order, testified that the order's pooling provisions need to be revised to better condition the receiving of the order's blend price to actual performance in supplying the market's Class I needs. Similarly, a witness representing Suiza Foods (Suiza), a company which owns and operates distributing plants regulated by the Central order, testified that the pooling of milk on the Central order needs to be directly tied to actual performance in serving the fluid market. The Suiza witness stressed that actual performance in serving the fluid market should be necessary because it is the fluid market that generates the additional dollars to the marketwide pool.

The Suiza witness testified that their costs and ability to obtain raw milk for Class I use are tied directly to the pooling provisions of Federal milk orders, including the Central milk order. The witness stressed that blend prices, especially relative blend prices, provide the incentives for producers to move milk to where it is needed. However, explained the witness, Suiza faces new challenges in the Central marketing area since its formation under milk order reform. Specifically, the witness noted difficulty in procuring milk at one of their plants because local dairy farmers are delivering their milk to plants regulated on the Southeast and Appalachian orders. According to the witness, the blend prices in those orders are higher than in the Central milk order and therefore attract milk to those markets.

The Suiza witness was of the opinion that milk order reform placed other Central order distributing plants at a similar competitive disadvantage in competing for a supply of milk. While noting that the purpose of this proceeding is to address pooling

problems resulting in lower blend prices to Central order dairy farmers, the witness stressed that in their opinion, the real issue that needs to be addressed is whether the Central order is too large. The witness cited the geographic diversity of the order and vastly differing marketing conditions within the marketing area's boundaries to question whether the Central order is truly a viable, single milk marketing area.

A witness from Mid States Dairy, an organization that operates a distributing plant regulated by the Central order, testified that they were no longer able to source milk from their usual milksheds in southern Missouri and central Illinois. This witness stated that until recently, they had to rely on contracts with southern milk sources at premium prices to obtain a supply of milk because milk supplies were not available locally.

The DFA, *et al.*, witness testified that the order's supply plant performance standards should continue to be adjusted seasonally but at slightly different times. According to the witness, a higher standard of performance is needed for the months of August through November because increased customer demand occurs in those months. More importantly, the witness indicated that performance should be specified for every month of the year. In this regard, the witness from Prairie Farms added that specifying August through November for increased performance would help to ease their need to obtain additional milk supplies from other marketing areas.

Using milk located within the marketing area to qualify milk for pooling at plants located far from the marketing area was described by the DFA, *et al.*, witness as ''pyramiding.'' The witness also attributed pyramiding to inadequate performance standards. As an illustration, the witness provided evidence to show how pooling provisions permit the pooling of milk volumes that cannot reasonably demonstrate performance in serving the Class I needs of the Central marketing area. As an example, the witness explained how a single tanker load of milk delivered to a pool plant within the Central order marketing area can qualify as many as 15 additional tanker loads of milk for pooling on the order though diversions. The witness contended that the ability to pyramid milk for pooling in this way reveals the inadequacy of the current pooling standards. Eliminating the ability to pyramid milk for pooling, the witness stressed, provides a basis for lowering the order's supply plant performance standard.

The DFA, *et al.*, witness testified that supply plants delivering milk to distributing plants not regulated by the Central milk order should not be counted in determining if the Central order's performance standards have been met. The witness indicated that such milk does not serve the Class I needs of the Central order. The witness offered that standards allowing for pool qualification to be earned from shipments to another order's distributing plants stem from pre-reform pooling provisions that were generally associated with ''reserve supply'' orders where Class I use was relatively small. The witness contended that the consolidated Central order is not such an order. While deliveries of milk to another order could still occur, noted the witness, the deliveries should not count toward pool qualification.

The witness from DFA, *et al.*, also offered a modification to Proposal 1 for incorporating a ''net shipments'' feature for pool supply plants as a way to ensure that fluid milk was actually received and retained at a distributing plant for Class I use. According to the witness, this feature would prevent a supply plant from physically shipping milk into the facilities of a distributing plant only to have the milk reloaded and moved to another plant for uses other than Class I. The witness also noted that without a ''net shipments'' provision, suppliers could qualify milk for pooling on the Central order without that milk ever being available to service the Class I needs of the market.

The witnesses from A–E concurred with the need for a ''net shipments'' provision, as did a witness from Foremost Farms, a fluid handler whose plants were regulated under the Central and Upper Midwest milk marketing orders. A witness from Suiza, testified that while they did not oppose a ''net shipments'' provision, they were of the view that milk actually delivered to a distributing plant was performing a service to the Class I needs of the market. To the extent that the same milk is subsequently pumped back out of the plant, indicated the witness, that decision is made by the receiving handler. Therefore, concluded the Suiza witness, such milk should be counted in determining if the supply plant performance standard is being met.

Briefs from both A–E and Dean Foods [1] reaffirmed their opposition to the inclusion of supply plant shipments to distributing plant unit plants as counting towards meeting pool qualifying performance standards noting that a relatively large non-Class I volume of milk is often associated with distributing plant units. The briefs contended that pooling stand-alone Class II operations could result in placing pooling priority for milk used in Class II dairy products on a par with milk used for Class I. They viewed that adoption of expanding supply plant qualifying deliveries to distributing plant units would create inequities and perhaps even result in creating new disorderly marketing conditions.

A group of cooperative associations with members located primarily in the Upper Midwest milk marketing area opposed amendments included in Proposal 1 because it was their view that the amendments would limit their ability to pool milk on the Central order. The cooperative associations included: Associated Milk Producers, Inc. (AMPI); Foremost Farms USA (Foremost); Land O'Lakes (LOL); First District Association (FDA); Family Dairies USA; and Lakeshore Federated Dairy Cooperative (Lakeshore), comprised of Midwest Dairymen's Company, Manitowoc Milk Producers Cooperative, and Milwaukee Cooperative Milk Producers. Hereinafter this decision will collectively refer to this group of cooperative associations as the ''Upper Midwest Cooperatives.''

Testimony by the Upper Midwest Cooperatives' witnesses argued that the adoption of more restrictive pooling standards would force milk that currently is pooled on the Central order to be pooled instead with the Upper Midwest pool. According to the witnesses, this would result in lower blend prices to Upper Midwest producers because of the lower Class I use in that area. The witnesses also argued that adopting the amendments contained in Proposal 1 would establish the more stringent pooling provisions that were in effect prior to milk order reform. According to the witnesses, this would establish a barrier to pooling the milk of producers who had long been associated with the markets merged to form the Central order.

To illustrate their point that the amendments of Proposal 1 would limit their ability to pool milk on the Central order, an Upper Midwest Cooperatives' witness testified that under current pooling provisions, every pound of milk delivered to Central order pool distributing plants provides the ability to pool 15 additional pounds of milk. If the pooling provisions proposed are adopted, the witnesses indicated that only 3 additional pounds of milk could

[1] Suiza Foods Corporation merged with Dean Foods Company on December 21, 2001, at which time the name of the merged company became Dean Foods Company.

be pooled for each pound of milk delivered on the Central order.

The Foremost Farms witness, testifying on behalf of AMPI, LOL, Family Dairies, Midwest Dairymen, and First District Association, testified that if Proposals 1 and 5 (Proposal 5 is discussed in more detail later in this decision) were adopted, and if they were pooling the maximum amount of milk allowed in the pre-reform orders, approximately 400 million pounds of milk per month would no longer be pooled on the Central order. Instead, the witness testified, this milk would be pooled on the Upper Midwest order. The witness maintained that this would increase the blend price differences between the two orders.

According to the Foremost Farms witness, the blend price differences would have ranged between 32 cents per hundredweight (cwt) to as much as 91 cents per cwt for the one-year period of September 2000 through August 2001 if the pooling standards proposed had been in effect during that time. The witness emphasized this would have had an enormous adverse effect on the net income of Upper Midwest producers.

An Upper Midwest Cooperatives' witness from Family Dairies testified in opposition to pooling provision amendments that would limit the ability to pool milk on the Central Order and result in lower blend prices to producers located in the Upper Midwest. The witness stated that adoption of such proposals would result in creating more regional pricing problems and give selected handlers the ability to use the blend price as a procurement tool in areas outside the Central Order.

A witness for Lakeshore joined other Upper Midwest Cooperatives' witnesses by also stating their concern that the proposed pooling changes specifically in Proposals 1, 3, 5, and 7 (Proposals 3, 5 and 7 are discussed later in this decision) could force milk currently pooled on the Central order to instead be pooled on the Upper Midwest order. According to the witness, this would result in decreasing producer returns for those dairy farmers located in Northern Illinois and the surrounding area. Specifically, the Lakeshore witness explained that while a fluid milk plant at Rockford, Illinois, and a Dubuque, Iowa, distributing plant have the same federal order-dictated Class I price, the Rockford plant is disadvantaged because it has to pay a higher competitive value to attract Class I milk, adversely impacting their northern Illinois businesses.

A witness from LOL emphasized the necessity of basing pooling provisions on performance in serving the Class I needs of the market rather than the location of where milk originates. The witness was also of the opinion that the current order provisions provide adequate incentives to service Central order distributing plants. Stating that producers who share in the pool must be willing to serve the market, the LOL witness nevertheless stressed that the ability to pool milk on the Central order pool should not be restricted for the benefit of a select few. The LOL witness testified that milk no longer pooled on the Central order would instead be pooled on adjoining milk orders such as the Upper Midwest or Western marketing areas and characterized these areas as already carrying a disproportionate volume of reserve milk.

In response to concerns that Central order Class I handlers are having difficulty in obtaining a supply of milk, the LOL witness provided an analysis which suggested that tightening pooling provisions would not achieve what the proponents of Proposal 1 assert. The witness estimated that adopting the proposed pooling provisions would result in an increase of 35 cents per cwt in the Central Order blend price. According to the witness, such an increase would still leave the Central order blend price $1.48 per cwt below the blend price of the Southeast order thus weakening the argument that the higher blend prices in orders to the south and southeast would mitigate the problem of Central order distributing plants securing a supply of milk.

The LOL witness asserted that the combination of Proposals 1, 3, 5, and 7 would place unreasonable restrictions on milk produced outside the marketing area relative to milk produced inside the marketing area. The witness indicated that supply plants located outside the marketing area would be required to receive milk and transfer it to distributing plants, thereby causing uneconomic movements of milk, adding costs and degrading milk quality due to additional handling. Furthermore, barriers to trade would be created by adopting these proposals, indicated the witness.

Two of the Upper Midwest Cooperatives' witnesses introduced cost-of-production studies conducted by universities indicating that dairy farmers in northern Illinois and Wisconsin enjoy little financial return from their dairy operations. The Foremost Farms witness cited the Wisconsin study to indicate that in Wisconsin the marginal return of producing milk can be less than zero. According to the witnesses, the financial impact by limiting participation in the Central order pool through increased performance standards would be detrimental to Upper Midwest dairy farmers. In this regard, all of the Upper Midwest Cooperatives' witnesses stressed that their member producers are considered small businesses pursuant to the Regulatory Flexibility Act and that such status should be considered in determining appropriate performance standards for the Central order.

The witnesses for A–E and Suiza testified in opposition to considering supply plant shipments to distributing plant ''units'' as counted in determining pool-qualifying deliveries unless each plant of the ''unit'' could independently be a distributing plant under the terms of the order. The witness noted that relatively large non-Class I volumes of milk associated with a distributing plant unit could result in reducing the actual need for qualifying shipments made to distributing plants. In post-hearing briefs, Dean Foods indicated opposition to expanding qualifying shipments to any plant that is part of a distributing plant unit, noting that such performance standards would be inequitable and result in the creation of new disorderly marketing conditions.

The record of this proceeding strongly supports concluding that the various features of the Central milk marketing order's supply plant pooling standards are either inadequate or unnecessary. These deficiencies contained in the pooling standards for supply plants are causing much more milk to be pooled on the Central milk order than can reasonably be considered as properly associated with the Central marketing area. Such milk does not demonstrate reasonable levels of performance necessary to conclude that it provides a regular and reliable service in satisfying the Class I milk demands of the Central marketing area.

The pooling standards of all milk marketing orders, including the Central order, are intended to ensure that an adequate supply of milk is supplied to meet the Class I needs of the market and to provide the criteria for identifying those who are reasonably associated with the market as a condition for receiving the order's blend price. The pooling standards of the Central order are represented in the *Pool Plant, Producer,* and the *Producer milk* provisions of the order. Taken as a whole, these provisions are intended to ensure that an adequate supply of milk is supplied to meet the Class I needs of the market. In addition, it provides the

criteria for identifying those whose milk is reasonably associated with the market by meeting the Class I needs and thereby sharing in the marketwide distribution of proceeds arising primarily from Class I sales. Pooling standards of the Central order are based on performance, specifying standards that, if met, qualify a producer, the milk of a producer, or a plant to share in the benefits arising from the classified pricing of milk.

Pooling standards that are performance-based provide the only viable method for determining those eligible to share in the marketwide pool. This is because it is the additional revenue from the Class I use of milk that adds additional income, and it is reasonable to expect that only those producers who consistently bear the costs of supplying the market's fluid needs should be the ones to share in the distribution of pool proceeds. Pool plant standards—specifically standards that provide for the pooling of milk through supply plants—also need to reflect the supply and demand conditions of the marketing area. This is important because producers whose milk is pooled receive the market's blend price.

Similarly, supply plant pooling standards should provide for those features and accommodations that reflect the needs of proprietary handlers and cooperatives in providing the market with milk and dairy products. When a pooling feature's use deviates from its intended purpose, and its use results in pooling milk that cannot reasonably be determined as serving the fluid needs of the market, it is appropriate to re-examine the need for continuing to provide that feature as a necessary component of the pooling standards of the order. Because one of the objectives of pooling standards is ensuring an adequate supply of fluid milk for the market, a feature which results in pooling milk on the order that does not provide such service should be considered as unnecessary for that marketing area.

Pooling standards are needed to identify the milk of those producers who are providing service in meeting the Class I needs of the market. If a pooling provision does not reasonably accomplish this end, the proceeds that accrue to the marketwide pool from fluid milk sales are not properly shared with the appropriate producers. The result is the unwarranted lowering of returns of those producers who actually incur the costs of servicing and supplying the fluid needs of the market.

The post-hearing brief received from the Upper Midwest Cooperatives continued to stress opposition to the amendments offered by Proposals 1 (and Proposals) 3, 5, and 7. They view that such changes to the Central milk marketing order are discriminatory and that the proposed amendments would foster inefficiencies in milk marketing. The brief re-iterated their view that the Department's policy has been to design plant and producer pooling provisions that provide a regulatory balance between the fluid needs of the market and transportation efficiency to meet those needs. In this regard, the brief stressed the opinion that orderly marketing is promoted by not requiring shipments to distributing plants when such shipments are not needed for fluid uses. Additionally, the brief asserts that the Department has long recognized that excluding milk from the pool is a greater threat to orderly marketing in surplus marketing areas than is the pooling of surplus milk supplies under rigid performance rules.

The Upper Midwest Cooperatives' brief added that marketwide pooling has been determined as a constitutional means for surplus Grade A milk to share in the additional revenue resulting from fluid sales. Additionally, the brief noted that the 43-day national hearing review and reform proceeding of 1990—and the Second Amplified Decision of 1996 of that proceeding—articulate the policy of the Department to allow milk to shift to different markets in response to blend price changes. The brief also cited case law to maintain that the statutory scheme for promoting orderly marketing is the sharing of proceeds among producers in the form of uniform, or blend, prices. The opinion expressed in the Upper Midwest brief cites that case law has concluded that producer blend prices cannot be thwarted by a discriminatory transportation burden imposed on distant producers by government mandate.

The record of this proceeding clearly supports a finding that certain features of pooling standards of the Central Order established under the Federal order reform process, especially as they relate to supply plants, are either inadequate or unnecessary. The Final Decision of milk order reform examined and discussed the various pooling standards and features of the pre-reform orders for their applicability in a new, larger consolidated milk order. The pooling standards and features adopted for the consolidated Central Order were designed to reflect and retain those standards and features of the pre-reform orders so as not to cause a significant change and indeed to provide for the continued pooling of milk that had been pooled by those market participants.

The record provides strong evidence to conclude that several features of the *Pool plant* definition, specifically the provisions and features for supply plants, are not being used for the reasons they were intended. Other shortcomings of the Central order, specifically as they relate to producer milk (discussed later in this decision) also contribute to the inappropriate pooling of the milk of producers who are not a legitimate part of the Central milk marketing area. Here too the impact is an unwarranted pooling of milk classed at lower prices resulting in a lower blend price to those producers who actually and consistently supply the Class I needs of the market.

This decision finds that the milk of some producers is benefitting from the blend price of the Central order while not demonstrating actual and consistent service in satisfying the Class I needs of the Central milk marketing area. This finding is attributed to faulty pooling standards. The pooling provisions provided in the Final Decision of milk order reform established pooling standards and pooling features that envisioned the needs of the market participants resulting from the consolidation of nine pre-reform milk marketing areas consolidated to form the current Central milk marketing area. The reform Final Decision, as it related to the Central marketing area, did not intend or envision that the pooling standards and pooling features adopted would result in the sharing of Class I revenues with those persons, or the milk of those persons, who would not be demonstrating a measure of service in providing the Class I needs of the Central marketing area.

The reform Final Decision examined and discussed various pooling standards and features of the pre-reform orders for applicability in a new, larger consolidated milk order. The pooling standards and features adopted for the Central order were intended to reflect and retain those standards and features of the pre-reform orders so as to not cause a significant change, and indeed to provide for the continued pooling of milk that had been pooled by those market participants. The pooling provisions of the Central order were based largely on the predecessor Iowa milk marketing order (then known as Order 79). The Iowa milk marketing order contained the more liberal pooling provisions of the nine orders consolidated to form the current Central order. The record of this proceeding reveals that the combination and features adopted for pool plants, especially as they apply to pool supply plants, are not reasonable or appropriate

standards for the much larger consolidated Central order.

The record of this proceeding reveals that two-thirds of the Central marketing area population (and corresponding demand for fluid milk) is located in the southern and western portions of the marketing area. However, the adoption of the current Central order pooling provisions did not anticipate that the adopted pooling standards would not adequately consider the impact on the northern Central marketing area resulting from the Arkansas and southern Missouri portions of the pre-reform Southwest Plains marketing area becoming part of the current Southeast marketing area. Milk produced in these regions had been regularly pooled on the Southeast milk order prior to the expansion of the Southeast order as part of milk order reform and is an integral part of the current Southeast marketing area milkshed. Changes in marketing conditions, as revealed in the record, have resulted from the existing pooling standards as an important factor in explaining why fluid handlers in the southern reaches of the Central order have had difficulties obtaining a supply of milk.

As previously indicated, pooling milk on the Central order without demonstrating actual performance in servicing the Class I needs of the market area is neither appropriate nor intended. The record indicates that the volume of milk pooled on the Central Order originating from sources far outside the marketing areas of the nine predecessor marketing areas increased by 186 percent when comparing, for example, the pre-reform month of December 1998 with the post-reform month of December 2000. Of the increase shown in this comparison, milk pooled on the order and originating within the marketing area increased by only 10 percent. Of the additional milk pooled on the Central order, the greatest increase is represented by milk priced at lower class prices. Additionally, testimony by Upper Midwest Cooperatives' witnesses clearly indicated that under the Central order's current pooling provisions, milk pooled on the Central order is not necessarily available to fill the Central market's fluid needs.

This decision agrees with the proponents and those entities who expressed support for adopting Proposal 1 that the order's pooling standards warrant changes. This decision finds, however, that the performance standards of Proposal 1 are unreasonably high when considering the complete context of the pooling provision modifications made in this decision. If adopted as proposed together with the other amendments adopted in this decision, milk that has had a long-established association in supplying those pre-reform marketing order areas consolidated to form the Central order may no longer be pooled on the Central order. Most of this milk originates from areas in the Upper Midwest marketing area. The performance standards sought in Proposal 1 may unintentionally compound the difficulties of Central order distributing plants in securing needed milk supplies that could be made available if not for unreasonably high performance standards. Accordingly, this decision adopts the following amendments to the pooling standards and features of the order:

1. Performance standards for supply plants are reduced to (1) 20 percent in each of the months of August through February and (2) 15 percent in each of the months of March through July. Lower supply plant shipping performance standards are established because of accompanying adjustments to the order's other pooling provisions and features. Lowering supply plant performance standards also addresses the concern by Upper Midwest Cooperatives that a ''tightening'' of the order's performance standards would erect an unreasonable barrier in supplying to, and to pooling milk on, the Central order. To the extent that the supply plant performance standards may warrant further refinement, the order already provides the means for initiating a change by providing authority for the Market Administrator to consider and make needed changes.

Given that performance standards are specified in every month, the need to continue with the automatic pool plant feature for supply plants during the 3-month period of May through July is rendered unnecessary and contrary to establishing such standards of performance in the first place. The adoption of year-round performance standards, adjusted seasonally, will better assure that a consistent and reliable supply of milk will be provided to the fluid market throughout the year.

August should be included for those months in which a higher performance standard is warranted. Including August in the higher performance months is supported by record evidence which reveals August as the beginning of seasonal increased demand due to the opening of schools occurring at the same time as a general overall decline in milk supplies.

2. This decision eliminates a handler's ability to qualify plants located outside the marketing area by cooperative handlers (as defined in § 1000.9(c)) or diversions from a pool plant of the Central order to another pool plant of the Central order. The record supports a finding that milk pooled in this manner does not actually demonstrate real service in meeting the Class I needs of the Central marketing area. Milk pooled in this manner was often referred to in record testimony as ''pyramiding.'' No reasonable basis can be found in the record evidence to conclude that milk pooled in this manner warrants receiving the Central order blend price. The record can only support concluding that milk pooled in this manner serves to lower the blend price paid to producers who actually do supply the market's Class I needs.

3. This decision finds that shipments of milk to distributing plants regulated by another Federal milk marketing order should not be considered in determining if a supply plant meets the specified performance standard for pooling. The performance standards adopted in this decision for the Central order are designed so that its distributing plants are adequately supplied with milk. Milk shipments to distributing plants regulated by another Federal order only serve the Class I needs of that other order. Pooling standards for the Central marketing area provide the criteria for determining the milk of those producers who are serving the Class I needs of the Central marketing area and who would thereby receive the Central order blend price. It is reasonable in light of this objective to conclude that serving the needs of another market is not providing a service to the Central marketing area. Accordingly, such milk should not be considered as a qualifying shipment for meeting the supply plant performance standards of the Central order.

4. This decision finds that the modification of Proposal 1 offered by DFA to limit pool qualifying deliveries to distributing plants on a ''net shipments'' basis is warranted. Milk deliveries to distributing plants will be limited to milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from the distributing plant. Relying on net shipments for determining pool qualifying deliveries to distributing plants is applicable to both supply plant deliveries and milk moved to distributing plants directly from the farms of producers. Adoption of this feature will help ensure that milk not serving the market's Class I needs will not be counted towards meeting the specified performance standard.

Providing a net shipments feature for the Central order is reasonable and will likely not be burdensome despite opposition to its adoption. Even with the inappropriate pooling of milk on the order, lower supply plant performance standards adopted in this decision are at levels below the Central market's Class I use of milk. While distributing plants do have some transfers and diversions of milk resulting from variations in demand arising from changing fluid milk needs on weekend days and holidays, this decision finds it is doubtful that the magnitude of these transfers and diversions would be such that a supply plant would risk loss of pool plant status. Additionally, other changes to the order's pooling standards adopted in this decision (discussed below) should provide the necessary safeguards that would make it even more unlikely that a supply plant would lose its pool status. This decision finds that adoption of a net shipments feature in the pooling standards of the Central order also will aid in properly identifying the milk of those producers who actually supply milk to meet the Central marketing area's fluid needs.

b. Cooperative Supply Plant Performance Standards

A cooperative supply plant pooling provision, together with the feature of authorizing the market administrator to adjust the performance standards for cooperative supply plants, should be retained. It is unclear whether Proposals 2 and 4, seeking removal of the cooperative supply plant performance standard and the corresponding provision authorizing the market administrator to adjust those standards, should be adopted in this tentative decision. Based on this, the Department has not adopted these proposals in this tentative decision.

The Central marketing order provides for a cooperative association plant as a type of supply plant on the order provided the cooperative association's plant is located within the marketing area and that at least 35 percent of the milk which the cooperative association handles is shipped to a Central order distributing plant during any current month or in the immediately preceding 12-month period. In addition, the provision requires that the cooperative association plant not qualify as a distributing or supply plant under the Central order or any other Federal milk marketing order.

The DFA, *et al.*, witness stated that adoption of some of the other proposals considered in this proceeding, such as modifying supply plant performance standards and providing for net shipments and a one-time ''touch base'' standard, makes retaining this provision unnecessary. The witness also testified that the provision has not been used since implementation of the consolidated Central order.

Elimination of the provision was supported in testimony by witnesses representing both A–E and Suiza Foods. Both witnesses stated that the provision is unnecessary and is not being used. In their post-hearing briefs, both A–E and Dean Foods reiterated that no plant is presently qualified under the cooperative supply plant definition.

Although there was no opposition testimony to the removal of the cooperative supply plant provision in the Central Order, this provision and the corresponding provision authorizing the market administrator to make needed adjustments should be retained pending further public comment. The testimony contained in the record does not contain sufficient reason for a finding to eliminate this standard other than it is a provision that is not used. The provision allows pool qualification for cooperative supply plants on either an average of the preceding 12-month's shipments or the current month's shipments and provides pooling flexibility for cooperatives. The cooperative supply plant definition contains features that are unique and intentional. While the proponents and supporters of Proposals 2 and 4 testified that the cooperative supply plant provision is not currently being used, testimony received did not address the apparently diminished importance of this pooling provision that was used in four of the nine pre-reform milk orders consolidated to form the Central order. The provision also is a pooling feature provided in most other Federal orders and, as with the Central order, is not currently being used in most of the other Federal orders containing this provision. Given the current record, removing this provision from the Central order may result in the unintended removal of a pooling provision intended for cooperative associations that may be needed at some future time. Accordingly, this decision does not adopt Proposals 2 and 4.

c. Supply Plant System Standards

Proposal 3 of the hearing notice seeking to increase the performance standards for a system of supply plants—and modified at the hearing to limit supply plant system formation to single handler entities instead of currently allowing such systems to be formed by multiple handlers—is not adopted in this tentative decision. As previously discussed, the record contains evidence that distributing plants regulated by the Central milk order are having difficulty obtaining an adequate supply of milk for fluid use. While this proposal's aim is, in part, to address this problem, there nevertheless remains the potential for a supply plant system to pool milk supplies that may not demonstrate actual service to the fluid needs of the Central marketing area. The modification of the proposal seeking to limit supply plant system formation to a single handler entity has merit. However, taking into account the current record, it should not be adopted as a modification to the order's current system pooling provision in this tentative decision. It is noted that the hearing testimony often referred to supply plant systems as ''supply plant units.'' Nevertheless, it is clear that hearing participants intended to mean ''supply plant systems'' and accordingly, this tentative decision considered the testimony in the context intended.

The supply plant system provisions of the Central order currently provide that a system of supply plants may qualify for pooling if 2 or more plants operated by one or more handlers meet the applicable performance standards established for a supply plant. A supply plant system would qualify to pool all of its milk receipts, including diversions, by meeting a performance standard of 25 percent in each of the months of September through November and January and of 35 percent for all other months. The order currently limits the formation of a supply plant system to plants located within the marketing area.

Proposal No. 3, by DFA, *et al.*, would raise the performance standards for supply plant systems by 5 percentage points for each of the months of August through November and by 3 percentage points higher in all other months. The proponent witness (representing DFA, *et al.*) testified that providing for supply plant systems extends benefits and efficiencies not otherwise available for individual handlers to reduce transportation costs by delivering milk from a more advantageously located supply plant at a volume that would satisfy the performance standards as if all supply plants not as advantageously located had individually met the indicated performance standard. According to the witness this also would avail plant efficiencies in the manufacturing operation of all supply plants that are part of the system. The witness also envisioned that the proposal could ease otherwise disruptive shipping obligations to their manufacturing operations, potentially

reduce paperwork, and provide the opportunity for producers to receive prices higher than regulated minimum prices. Because system pooling offers a rewarding degree of pooling flexibility, the witness was of the opinion that a supply plant system should meet slightly higher performance standards than those applicable for a single supply plant. This rationale is consistent, the witness indicated, with the pre-reform Chicago Regional order which specified a performance standard at twice the rate for supply plant systems than was applicable for individual supply plants.

According to the DFA, *et. al.,* witness, a higher performance standard for supply plant systems would contribute to making it easier to obtain additional milk supplies in the most efficient manner. Additionally, the witness was of the opinion that this change, together with other changes proposed, would eliminate the ability to ''pyramid'' the pooling of milk on the order and renew interest in supply plant systems for the market.

A witness from Associated Milk Producers, Inc. (AMPI), who also testified on behalf of the Upper Midwest Cooperatives, opposed adoption of Proposal 3. The witness explained that increased performance standards would simply cause a handler to discontinue pooling its plants as a system, thus forcing the handler to ship a lower percentage of milk receipts from each of the individual supply plants. The witness asserted that this alternative would increase transportation costs without providing additional milk to distributing plants.

An Upper Midwest Cooperatives' witness of AMPI also testified that a supply plant system operated by multiple handlers has the potential for one handler with substantially more sales to distributing plants than needed to meet the supply plant performance standard to pool the milk receipts of other handlers. According to the witness, this could reduce the total volume of milk shipments to distributing plants while technically meeting the order's performance standards. According to the witness, such a provision allows some handlers to entirely escape responsibility for supplying the fluid market and encourages handlers to pay other handlers to qualify their milk supplies for pooling. In light of these concerns, the witness offered a modification to Proposal 3 that limits supply plant system formation to single handler entities.

A witness testifying on behalf of Foremost, AMPI, LOL, Family Dairies, Midwest Dairymen, and First District Association supported the advantages supply plant systems offer as a means to promote more efficient movement of milk to distributing plants. However, given the higher performance standards called for by the proposal, the witness indicated opposition to Proposal 3. The witness was of the opinion that there is no justification for supply plant systems to be required to meet higher performance standards than individual supply plants. The witness did note that a higher performance standard for a supply plant system formed by multiple handlers may be appropriate.

Providing pooling flexibility by permitting more than a single supply plant to form into a single pooling system offers the potential to increase efficiencies by minimizing transportation costs that may not be obtainable when each supply plant of the handler would need to meet the performance standards separately for each plant. Additionally, providing for supply plant systems serves to accommodate the specialization of plant operations without otherwise encouraging such a plant to deliver milk to a distributing plant solely to retain pool status. Providing the opportunity to gain such efficiencies is intended by the supply plant system provision because it does not disrupt the flow of milk for Class I use from supply plants to distributing plants.

The record suggests that supply plant systems formed by multiple handler entities offer the potential to pool milk on the Central order without meeting intended performance standards. The modification to Proposal 3, which would limit the formation of a supply plant system to a single handler entity, may offer a warranted change in the current supply plant system provisions without changing the current performance standards. However, this tentative decision finds that the record does not provide sufficient evidence to tentatively adopt a change in the performance standards for supply plant systems or to limit the formation of supply plant systems.

d. Standards for Producer Milk

Several changes to the pooling standards contained in the *Producer milk* definition of the Central Order should be adopted immediately. The adopted amendments were largely contained in a proposal, published in the hearing notice as Proposal 5, which was modified at the hearing by its proponents. These producer milk pooling standard changes are necessary to more accurately identify the milk of those dairy farmers who actually serve the Class I needs of the market. The amendments include: (1) Establishing year-round diversion limits, adjusted seasonally, for the amount of milk that a pool plant may divert to nonpool plants at 80 percent for each of the months of August through February and at 85 percent for each of the months of March through July. Accordingly, the current lack of diversion limits for the months of May through August is corrected; (2) Diversion limits for supply plants will be based on deliveries to Central order pool distributing plants and will not include deliveries to other pool supply plants of the Central order. This will eliminate the ability of a pool plant to pool increased volumes of milk by diversion to nonpool plants by diverting milk to a second pool plant; and (3) Establishing a net shipments feature for producer milk. These amendments will maintain the integrity of the performance standards for pool plants of the Central marketing area and will more appropriately identify those producers whose milk actually is supplying the Central marketing area's Class I milk needs.

The *Producer milk* provision of the Central order provides for diversion limits of 65 percent during the months of September through November and January and 75 percent during the months of February through April and December. While the Central order limits the pooling eligibility of diverted milk to nonpool plants in specified months, the order places no limits on milk diversions to other pool supply plants of the order. Milk diverted from one pool plant to another pool plant enables the diverting pool plant to increase the amount of milk that can be pooled but diverted to nonpool plants. During the months of May through August, an unlimited amount of producer milk may be diverted by pool plants to nonpool plants. The milk of a producer is not eligible for diversion until at least one day's production of a dairy farmer has been physically received at a pool plant and the producer has continually retained producer status on the Central order. Finally, the order does not currently determine producer milk on a net-shipments basis.

Proposal No. 5, offered by DFA, *et al.*, seeks to establish new year-round diversion limits for producer milk at 75 percent for each of the months of August through November and at 80 percent for each of the months of December through July. These limits are subject to satisfying certain performance measures and would specify that at least 20 percent of receipts in each of the months of August through February and

15 percent in each month of all other months are delivered to Central order distributing plants. Because year-round diversion limits would be established for all months, the proposal is intended to eliminate the ability to pool an unlimited amount of milk on the order during May through August by diversion.

Proposal 5, offered by DFA, *et al.*, was modified in testimony by the DFA witness. The modification proposed sought also to incorporate a net-shipments feature for producer milk as they had proposed as a modification to Proposal 1. According to the witness, the net-shipments feature would be used to determine pool-qualifying diverted milk on the basis of milk receipts transferred or diverted to and physically received by Central order distributing plants less any transfers or diversions of milk from such distributing plants.

The DFA, *et al.*, witness testified that the core issues of the hearing are restoring orderly marketing conditions and economically justifying the appropriate performance standards that, if met, warrant receiving the Central Order blend price. The witness explained that orderly marketing embodies the principles of common terms and pricing that attracts milk to move to the highest-valued use when needed and for milk to clear the market when not needed in higher-valued uses. The DFA witness was of the opinion that the percentage of allowable diversions should be increased over those currently applicable in the Central order. The witness indicated that this becomes possible with the adoption of the other pooling provision amendments, including changing performance standards and considering milk deliveries to distributing plants on a net shipments basis.

The DFA, *et al.*, witness testified that the Central order should provide a limit on the amount of milk that can be diverted to nonpool plants each month by conditioning diversions on the basis of milk shipments to pool distributing plants or distributing plant units of the Central order. The witness stated that the aim of these features is to provide a better correlation between the order's pooling provision standards.

A witness representing several fluid milk processing plants joined in expressing their support for adopting year-round diversion limits. They were of the opinion that this would enhance pooling the milk of only those who provide an adequate supply of milk for fluid uses.

Witnesses representing the Upper Midwest cooperatives testified in opposition to the adoption of Proposal 5 and to the proposal's modification to incorporate a net-shipments feature. In their opinion, these changes would unnecessarily limit the amount of milk that could be pooled on the Central order. The witnesses indicated that this would force surplus milk supplies to be pooled instead on the Upper Midwest order. As a result, they testified, the Upper Midwest pool would be diluted and result in a lower blend price for their producers in the Upper Midwest.

A witness for the First District Association testified that diversion limits are not always needed for every month. The witness maintained that having year-round diversion limits would reduce competition and result in lower milk prices for producers of the Central marketing area. The witness argued that diversion limits should be provided only for ensuring the orderly marketing of fluid milk but should not be used so as to constitute a barrier to pooling milk.

The Central milk order, as all other Federal milk marketing orders, provides and accommodates for diverting milk because it facilitates the orderly and efficient disposition of the market's milk not needed for fluid use without the loss of the benefits that arise from being pooled on the order. When producer milk is not needed by the market for Class I use, its movement to nonpool plants for manufacturing should be provided for without loss of producer milk status. Preventing or minimizing the inefficient movement of milk solely for pooling purposes also needs to be reasonably accommodated. However, it is just as necessary to safeguard against excessive milk supplies becoming associated with the market through the diversion process.

A diversion limit establishes the amount of producer milk that may be an integral milk supply of a pool plant. With regard to the pooling issues of the Central order, it is the lack of diversion limits to nonpool plants, in part, that significantly contributes to the pooling of much more milk on the order that does not provide service to the Class I market yet receives the Central order blend price. Such milk is not a legitimate part of the reserve supply of the plant.

Milk diverted to nonpool plants is milk not physically received at a pool plant. However, it is included as a part of the total producer milk receipts of the diverting plant. While diverted milk is not physically received at the diverting plant, it is nevertheless an integral part of the milk supply of that plant. If such milk is not part of the integral supply of the diverting plant, then that milk should not be associated with the diverting plant. Therefore, such milk should not be pooled.

The lack of diversion limits only provides a means for associating much more milk with the market without the burden of demonstrating actual service in meeting the Class I needs of the market. Associating more milk than is actually part of the legitimate reserve supply of the diverting plant unnecessarily reduces the potential blend price paid to dairy farmers. Without diversion limits, the order's ability to provide for effective performance standards and orderly marketing is weakened.

The lack of diversion limit standards applicable to pool plants opens the door for pooling much more milk on the market. While the potential size of the pool should be established by the order's pooling standards, the lack of diversion limits renders the potential size of the pool as undefined. With respect to the marketing conditions of the Central marketing area evidenced by the record, this decision finds that the lack of year-round diversion limits on producer milk has caused much more milk to be pooled on the order than can reasonably be considered part of the legitimate reserve supplies of the pool plants and does not provide any actual service in meeting the Central market's Class I needs.

The lack of standards applicable for diversions to nonpool plants for the months of May through August has resulted in the pooling of much more milk than can demonstrate any actual service in meeting the Class I needs of the Central marketing area. The diversion limit standards of Proposal 5 address this concern. However, the diversion limits adopted herein are higher than those proposed. Increasing the diversion limit standard is made possible because of other changes being adopted by this tentative decision. The changes adopted to the diversion limits standards in this tentative decision are set at a level to appropriately complement the adopted performance standards. Accordingly, this decision establishes a diversion limit for producer milk of 80 percent for each of the months of August through February and 85 percent for each of the months of March through July. In addition, it should be noted that the diversion limits may be adjusted by the Market Administrator.

As previously discussed, this decision has determined that only deliveries or diversions to pool distributing plants, and not deliveries to pool supply plants, should be allowed to qualify subsequent supply plant diversions for pooling on

the order. Such conditions are carried into the producer milk definition as a condition for diversion eligibility. It is also consistent, in light of such linkage, that a net shipments feature should be provided as part of the producer milk provision. However, as discussed earlier in the section on pooling standards, the evidence contained in the record does not support the inclusion of deliveries to pool distributing plant units to qualify supply plant diversions for pooling. Accordingly, this feature of Proposal 5 is not adopted.

A proposal, published in the hearing notice as Proposal 9, seeking to allow milk to be eligible for diversion to nonpool plants and for such milk to retain its association with the market for any months during which a handler failed to pool a dairy farmer's milk under any milk marketing order is not adopted. This decision finds that a dairy farmer's milk must be physically received at a pool plant of the Central order before it is eligible for diversion to nonpool plants. Additionally, this decision finds that if milk is not continuously pooled, that it again must be received at a pool plant before regaining pooling eligibility.

The Central order currently specifies that the milk of a new producer, or a producer who has broken association with the market, is not eligible for diversion until one day's production is physically received at a pool plant in the first month, and the dairy farmer continuously retained producer status in following months. The dairy farmer's milk is associated with the market if it is included in the pool each month, except as a result of a temporary loss of Grade A approval.

Proposal 9 would allow milk diverted to a nonpool plant before the producer's milk is actually delivered to a pool plant in the same month to be considered producer milk. Proposal 9 also included a provision to allow the milk of a dairy farmer to retain its association with the market for any months during which the handler failed to pool the producer's milk under any order.

Proposal 9 was offered by the Upper Midwest Cooperatives. A witness from AMPI, testifying on behalf of the Upper Midwest Cooperatives, explained that Proposal 9 is needed to assure that producers' milk can be pooled for the entire month as long as one day's production is physically received at a pool plant any day during the month. According to the witness, producers could miss several days of being able to pool milk on the Central order due to unexpected phenomena, such as weather, trucking problems, and scheduling conflicts.

According to the AMPI witness, Proposal 9 also would allow milk to return for pooling on the order in the month following the month in which it was not pooled due to a price inversion (when the blend price is less that the Class III or Class IV price). In this regard, the witness noted that the order currently provides for milk to be pooled at least one day each month before being eligible for diversion to nonpool plants regardless of whether it is economically sound to pool milk based on the blend price that would result for the month.

The touch base standard of an order establishes an initial association by the producer, and the milk of the producer, with the market. In this way, the touch base provision serves to maintain the integrity of the order's performance standards. The record does not contain sufficient evidence for setting conditions that negate the need to properly re-establish association with the market. Doing so is neither burdensome nor unreasonable considering that only one day's milk production of a dairy farmer needs to be delivered to a plant and pooled in order to maintain association with the market. The possible occurrence of a price inversion which may cause cooperatives to not pool milk for a given month to date is speculative and is an unlikely event because of milk order reform changes in how Class I prices are established. Class I prices are established on the basis of the higher of an advance Class III or Class IV price. In part, such change was made so as to minimize the possibility of price inversions. Accordingly, Proposal 9 is not adopted.

e. Establishing Pooling Standards for ''State units''

A proposal, published in the hearing notice as Proposal 7, seeks to establish pooling units organized and reported by State, specifying that in order to pool milk from those States located outside of the States and specified counties that comprise the Central marketing area, each State unit would need to meet the performance standards applicable for pool supply plants. This proposal is not adopted. The Central order does not currently provide for pooling milk located outside of the marketing area in this manner.

Proposal 7, offered by Dairy Farmers of America (DFA), would group and report milk in State units and specify performance standards for such State units as those applicable to pool supply plants. The milk that would be affected would be milk located outside the States of Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska, Oklahoma, and South Dakota, the Minnesota counties of Fillmore, Houston, Lincoln, Mower, Murray, Nobles, Olmstead, Pipestone, Rock, and Winona, and the Wisconsin counties of Crawford, Grant, Green, Iowa, Lafayette, Richland and Vernon.

The DFA witness testified that milk is being pooled on the Central order that is located in areas so far from the marketing area that such milk cannot and does not service the Class I needs of the Central market. The witness argued that milk from such distant areas was never intended to be a source of milk or a part of the Central milk marketing area. According to the witness, large portions of the States of Minnesota and Wisconsin, characterized as a ''distant'' source of milk, had not historically been part of the supply area for the pre-reform marketing areas consolidated to form the Central milk marketing area. DFA argued that milk from these areas should be subject to the same performance standards as milk from other distant areas such as California or New Mexico.

According to the DFA witness, distant milk currently pooled on the Central order likely would not seek to be pooled on the order because the benefits of receiving a higher blend price for milk actually delivered to Central order pool plants would not offset the costs that would be incurred in transporting milk. In attempting to clarify what would be determined as being not distant, the DFA witness offered a method to distinguish between historical and distant milk supplies. Milk from counties associated with the Central market's pre-reform orders, which in 1998 had a daily supply volume in excess of one 50,000 pound load, would be included with milk considered to be local or in-area and not distant milk.

The principal problem confronting the Central order, as identified by the DFA witness, is that the distant milk receives the order's blend price without the burden of providing any regular and consistent service to the market beyond meeting a one-day touch-base standard. The witness argued that their proposal would set standards for milk from distant areas identical to local milk as a condition for receiving the order's blend price. Providing for this would not, according to the witness, discriminate, penalize, or establish any barriers to the pooling of milk on the Central order because the standards for local milk supplies and distant milk supplies are the same. Support was given in testimony for establishing State units by witnesses representing Prairie Farms and Suiza.

A number of hearing participants opposed the adoption of the State unit

pooling proposal, specifically the witnesses representing Upper Midwest cooperative associations. The Foremost Farms witness argued that adoption of the proposal would discourage efficient movements of milk to distributing plants and that such a provision would be inconsistent with the Agricultural Marketing Agreement Act (AMAA). This witness questioned why an organization with milk in the Central marketing area should be required to transport milk from distant areas in Minnesota and Wisconsin when the same organizations already have enough milk in the marketing area to satisfy the order's pooling standards. The witness indicated that this could result in forcing milk located within the marketing area to be hauled long distances to make room for the receipt of milk from distant locations.

The AMPI witness agreed with the Foremost witness's testimony and the witness representing the First District Association which asserted that adopting State unit pooling for distant milk would destroy the benefits of pooling milk on the Central order. They held this opinion because the differences between Class I use and blend prices between the Central and Upper Midwest orders would narrow.

In post-hearing briefs, the Upper Midwest Cooperatives continued to express opposition to DFA's Proposal 7 (and to Proposals 1, 3, and 5). They characterized their opposition as establishing barriers to pooling on the basis of where milk is located through government-mandated transportation costs. As indicated above on proposals affecting pool plants and producer milk, their brief cited case law to advance their contention that such amendments would not be legal.

The record does not support the adoption of performance standards for pooling milk on the order on the basis of its location, or as the proponent and supporters of Proposal 7 describe as State units. The marketing conditions of the Central order do not exhibit the need to require additional performance standards for milk located outside of the marketing area beyond those adopted in this tentative decision. Accordingly, all plants, regardless of location, may become eligible to have the milk of producers pooled on the Central order by meeting the performance standards specified for the various types of pool plants.

It is not important who provides the milk for Class I use or from where this milk originates. The order boundaries of the Central order were not intended to limit or define which producers, which milk of those producers, or which handlers could enjoy the benefits of being pooled on the Central order. What is important and fundamental to all Federal orders, including the Central order, is assuring an adequate supply of milk to meet the market's fluid needs, the proper identification of those producers who supply the market, and an equitable means of compensating those producers from the market's pool proceeds.

As discussed earlier on pooling standards for pool supply plant qualification, the provisions of the consolidated Federal milk orders were not intended to exclude any milk from being pooled on any order, as long as the fluid needs of a marketing area are being served by the milk. At the same time, reform of Federal milk orders did not adopt open pooling, but attempted to provide that each market pool would include the milk that actually is available for serving the fluid needs of the market. The determination of the boundaries of the Central marketing area was guided by the identification of the common characteristics of the predecessor orders that could be consolidated to form the marketing area and to promulgate a marketing order to provide for orderly marketing conditions. The consolidation of the pre-reform orders into the current Central order was not intended to determine those areas from which milk should, or should not, be obtained to serve the market. The adoption of revised pooling standards in this tentative decision should assure milk will be available for the Central market's fluid needs and therefore renders the proposed State unit provision unnecessary. Proposal 7 is not adopted.

2. Simultaneous Pooling on More Than One Marketwide Pool

A proposal, published in the hearing notice as Proposal 8, seeking to exclude the same milk from being simultaneously pooled on the Central order and any State-operated order which provides for marketwide pooling should be adopted immediately. The practice of pooling milk on a Federal order and simultaneously pooling the same milk on a State-operated order also has come to be referred to as ''double dipping.'' The Central order does not currently prohibit milk to be simultaneously pooled on the order and a State-operated order that provides for marketwide pooling. Proposal 8 was offered by A–E, Swiss Valley Dairy, AMPI, Family Dairies USA, FDA, Foremost, Milwaukee Cooperative Milk Producers, Manitowoc Milk Producers Cooperative, and Mid-West Dairymen's Company.

The AMPI witness, testifying on behalf of all the proponents of Proposal 8, stressed that a producer is prohibited from pooling the same milk on more than one Federal order. The witness maintained that the same restriction should be applicable between the Central order and any other regulatory authority that provides for marketwide pooling and the marketwide distribution of pooling revenue. According to the witness, this has been occurring with milk pooled under the California State-operated milk order program since March 2001, and continues.

The AMPI witness explained that the Central order pooling provisions allow a one-time minimal delivery of a single day's milk production of California producers to a Central order pool plant to qualify all subsequent milk production of California producers on the Central order by diversion. However, the witness stressed, all of the same California milk is pooled on the State's milk order program and receives the pricing benefits that the California state program offers its dairy farmers.

The AMPI witness testified that the volume of California milk pooled on the Central order has been increasing since March 2001 and is unnecessarily reducing milk prices paid to Central order producers. The witness presented calculations that indicated that the impact on the Central order blend price was an average reduction of about 2 cents per hundredweight, amounting to almost $2 million in the 7-month period of March through September 2001. The witness stated that due to the obvious injurious effect on Midwest dairy farmers, the Department should put an end to the practice of double dipping and to do so on an emergency basis.

A witness testifying on behalf of the proponents explained that the reason milk used in manufactured products is included in a marketwide pool is that such milk represents a reserve supply of milk that is available to serve fluid distributing plants when needed. Accordingly, the witness stressed that the same milk cannot be considered to be available as a supply for fluid distributing plants regulated under two different marketwide pools. The witness explained that Proposal 8 would not preclude the pooling of California milk, or milk from any other jurisdiction that has marketwide pooling on the Central order. However, the proposal would preclude the pooling of the same milk on the Central order when pooled under the other order, like the California State milk order that provides for marketwide pooling. In this regard, the witness stated that there is no doubt that California's milk order pooling plan

provides for marketwide pooling, adding that those who say it does not probably are basing their conclusion on California's quota and overbase pricing for milk.

Several other proponent witnesses representing cooperative associations whose member milk is pooled under the Central order supported the adoption of the proposal to eliminate ''double dipping'' as did two distributing plant operators. Both of the fluid processor representatives argued that milk originating from outside of a 500-mile radius of any of the order's distributing plants is not realistically available to serve the Class I market on a regular basis.

The representative from Land O'Lakes was opposed to adopting Proposal 8. The witness asserted that, despite evidence to the contrary, California does not have a marketwide pool. The witness explained that producers are paid on the basis of a quota price for milk used in fluid and soft dairy product uses, while the basis for non-quota milk is manufacturing values. The returns to producers arising from quota uses of milk, stated the LOL witness, are not distributed marketwide.

The LOL witness proposed a modification to Proposal 8 that would eliminate ''double dipping'' only with respect to the ''quota'' portion of the milk associated with the Central order and allow simultaneous pooling of ''overbase'' California milk on both the California and Central orders. The witness expressed concern that elimination of the ability of the same milk to be pooled simultaneously under a Federal order and a State order with marketwide pooling would cause problems in dealing with milk supplies from other States—such as Pennsylvania and North Dakota—that are considering modifying provisions to include marketwide pooling.

For over 60 years, the Federal Government has operated the milk marketing order program. The law authorizing the use of milk marketing orders, the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides authority for milk marketing orders as an instrument which dairy farmers may voluntarily opt to use to achieve objectives consistent with the AMAA and that are in the public interest. An objective of the AMAA, as it relates to milk, was the stabilization of market conditions in the dairy industry. The declaration of the AMAA is specific: ''the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce.''

The AMAA provides authority for employing several methods to achieve more stable marketing conditions. Among these is classified pricing, which entails pricing milk according to its use by charging processors differing milk prices on the basis of form and use. In addition, the AMAA provides for specifying when and how processors are to account for and make payments to dairy farmers. Plus, the AMAA requires that milk prices established by an order be uniform to all processors and that the price charged can be adjusted by, among other things, the location at which milk is delivered by producers (section 608(c)(5)).

As these features and constraints provided for in the AMAA were employed in establishing prices under Federal milk orders, some important market stabilization goals were achieved. The most often recognized goal was the near elimination of ruinous pricing practices of handlers competing with each other on the basis of the price they paid dairy farmers for milk and in price concessions made by dairy farmers. The need for processors to compete with each other on the price they paid for milk was significantly reduced because all processors are charged the same minimum amount for milk, and processors had assurance that their competitors were paying the same value-adjusted minimum price.

The AMAA also authorizes the establishment of uniform prices to producers as a method to achieve stable marketing conditions. Marketwide pooling has been adopted in all Federal orders because of its superior features of providing equity to both processors and producers, thereby helping to prevent disorderly marketing conditions. A marketwide pool, using the mechanism of a producer settlement fund to equalize on the use-value of milk pooled on an order, meets that objective of the AMAA of ensuring uniform prices to producers supplying a market.

The California State milk order program clearly has objectives similar to those of the AMAA. Exhibits presented at the hearing indicate that the California State order program has a long history in the development and evolution of a classified pricing plan and in providing equity in pricing to handlers and producers. Important as classified pricing has been in setting minimum prices, the issue of equitable returns to producers for milk could not be satisfied by only the use of a classified pricing plan. Some California plants had higher Class I fluid milk use than did others and some plants processed little or no fluid milk products. As with the Federal order system, producers who were fortunate enough to be located nearer Class I processors had been receiving a much larger return for their milk than producers shipping to plants with lower Class I use or to plants whose main business was the manufacturing of dairy products. Over time, disparate price differences grew between producers located in the same production area of the state which, in turn, led to disorderly marketing conditions and practices. These included producers who became increasingly willing to make price concessions with handlers by accepting lower prices and in paying higher charges for services such as hauling. Contracts between producers and handlers were the norm, but the contracts were not long-term (rarely more than a single month) and could not provide a stable marketing relationship from which the dairy farmers could plan their operations.

In 1967, the California State legislature passed and enacted the Gonsalves Milk Pooling Act. The law provided the authority for the California Agriculture Secretary to develop and implement a pooling plan, which was implemented in 1968. The California pooling plan provides for the operation of a State-wide pool for all milk that is produced in the State and delivered to California pool plants. It uses an equalization fund that equalizes prices among all handlers and sets minimum prices to be paid to all producers pooled on the State order. While the pooling plan details vary somewhat from pooling details under the Federal order program, the California pooling objectives are basically identical to those of the Federal program.

It is clear from this review of the Federal and the California State programs that the orderly marketing of milk is intended in both systems. Both plans provide a stable marketing relationship between handlers and dairy farmers and both serve the public interest. It would be incorrect to conclude that the Federal and California milk order programs have differing purposes when the means, mechanisms, and goals are so nearly identical. In fact, the Federal order program has precedent in recognizing that the California State milk order program has marketwide pooling. Under milk order provisions in effect prior to milk order reform, and under § 1000.76(c), a provision

currently applicable to all Federal milk marketing orders, the Department has consistently recognized California as a State government with marketwide pooling.

Since the 1960's the Federal milk order program recognized the harm and disorder that resulted to both producers and handlers when the same milk of a producer was simultaneously pooled on more than one Federal order. When this occurs, producers do not receive uniform minimum prices, and handlers receive unfair competitive advantages. The need to prevent ''double pooling'' became critically important as distribution areas expanded and orders merged. The issue of California milk, already pooled under its State-operated program and able to simultaneously be pooled under a Federal order, has, essentially, the same undesirable outcomes that Federal orders once experienced and subsequently corrected. It is clear that the Central order should be amended to prevent the ability of milk to be pooled on more than one order when both orders employ marketwide pooling.

There are other State-operated milk order programs that provide for marketwide pooling. For example, New York operates a milk order program for the western region of that State. A key feature explaining why this State-operated program has operated for years alongside the Federal milk order program is the exclusion of milk from the State pool when the same milk is already pooled under a Federal order. Because of the impossibility of the same milk being pooled simultaneously, the Federal order program has had no reason to specifically address double dipping or double pooling issues, the disorderly marketing conditions that arise from such practice, or the primacy of one regulatory program over another. The other states with marketwide pooling similarly do not double-pool Federal order milk.

The record testimony and evidence show milk pooled on the Central order originating from places distant from the area. However, this decision acknowledges that with the advent of the economic incentives for California milk to be pooled on the Central order and, at the same time, enjoy the benefits of being pooled under California's State-operated milk order program, more milk has come to be pooled on the order that has no legitimate association with the integral milk supplies of the Central order pool plants. The association at present has been made possible only through what some market participants describe as a regulatory loophole.

California milk should only be eligible for pooling on the Central order when it is not pooled on the California State order and when it meets the Central's pooling standards. It is the ability of milk from California to ''double dip'' that is a source of disorderly marketing conditions and for much more milk being pooled on the Central order.

Proposal 8 offers a reasonable solution for adding a prohibition on allowing the same milk to draw pool funds from Federal and State marketwide pools simultaneously. It is consistent with the current prohibition against allowing the same milk to participate in two Federal order pools simultaneously. Adoption of Proposal 8 will not establish any barrier to the pooling of milk from any source that actually demonstrates performance in supplying the Central market's need for milk used in Class I.

3. Rate of Partial Payments to Producers

A proposal that would change the rate of the partial payment to producers and cooperatives for milk delivered during the first 15 days of the month to the lowest class price for the prior month times 110 percent, published in the hearing notice as Proposal 6, is not adopted. Therefore, the partial payment rate will remain as currently provided for by the order—at the lowest class price for the prior month.

This proposal offered by DFA intends to improve producer cash flow by bringing the partial payment into a closer relationship to the final blend price and to have the partial payment more closely reflect the value of the milk delivered to handlers during the first 15 days of the month. According to the DFA *et al.,* witness, the partial payment rate has declined as a share of the final payment since the consolidation of the Central market under milk order reform.

The DFA, *et al.,* witness stressed that producers need a more consistent cash flow than they currently are experiencing. The witness acknowledged that overpayment in the partial payment could be a problem if the producer does not have enough funds coming in the month's final payment to cover the producer's authorized deductions. The witness noted that the existing $1.00 per hundredweight premiums above minimum order prices enjoyed by Central order producers are probably adequate to cover any overpayments made to producers.

Data provided by the DFA, *et al.,* witness sought to indicate that since order reform on January 1, 2000, the amount of the partial payment received by producers relative to the total payment for milk each month has been reduced when compared to the pre-reform orders. The analysis consisted of approximating a weighted average blend price as a proxy for a comparable order from the pre-reform order's information. The analysis, explained the witness, is a comparison of the current month's blend price with the lowest of the two lower class prices of the prior month. For the entire 56-month period, the witness stated, the average of the blend price minus the lowest class price was $1.59; the first 36 months the average was $1.52; and the last 20 months the average was $1.75. The witness concluded that the main concern revealed by this data is that the spread is widening. After evaluating several differing partial payment rates, the witness concluded that a five percent inflation at the prior month's lowest class price was a reasonable adjustment to approximating the spread that existed over the first 36-month period.

The DFA, *et al.,* witness also testified that there are a wide variety of payment dates and payment levels among the 11 orders. There are currently, said the DFA witness, three groupings: The Southern orders' payments are a percentage of the prior month's blend price adjusted for location; the Northwest and Central orders areas set the advanced payment at the prior month's lowest class price; and the Western orders use an add-on percentage applied to the prior month's lowest class price. The witness also noted that while most orders have one partial payment, the Florida order has two partial payments before a final payment is due.

Several individual dairy farmers also testified that their cash flow situations have deteriorated since the current partial payment rate provisions became effective. In this regard, all dairy farmers testified in support of increasing the rate of partial payment.

A representative of Leprino Foods, a national cheese-processing firm, testified that USDA should reject Proposal 6 since it does not appropriately address the issue it purports to remedy and since it violates the minimum pricing concepts for manufacturers, but not because there is lack of need for an amendment. The Leprino witness testified that the cause of the disparity between the partial and final payment rates is a combination of a failure to blend the pool's higher use values into the partial payment and the use of a price level from the previous month rather than the current month. This witness argued that rather than addressing these problems in the

proposal, the proposed increase in the rate merely transfers the burden to processors. The witness stated that the proposal violates minimum pricing principles by setting the partial rate above the equivalent market value for Classes III and IV, with the resulting differences in partial payment rates between orders causing disparate economic positions for competing Class III and IV handlers in different orders.

The witness from Leprino concluded that the most appropriate approach to address the root cause of the disparity between the partial and final payment would be the implementation of a similar minimum payment in pooling structure for the partial payment that exists in the final payment. However, the witness did not propose its adoption because such a remedy would require significant administration in terms of plant reporting, report analysis, pool calculation, and movement of funds into and out of the pool in the current system of minimum payment at the lowest class price. This concept was not properly noticed, the witness argued, and a more comprehensive review of all provisions of the order that would be affected and the magnitude of the impact would be necessary.

The Department reconstructed noticed data that recreated the intended analysis presented by witnesses. The Department's reconstruction relied, in part, on the partial payment provisions of the pre-reform orders. The Department used the previous month's Class III price of the pre-reform orders as the lowest class price because the Class III price was used then to set the rate of partial payment. In this regard, comparing partial payment relationship outcomes using actual historical provisions provided for comparing pre- and post-reform partial payment relationships as to the total payment for milk in a month.

Even with the limited amount of data available since the implementation of order reform, the Department's comparison of pre- and post-reform partial payment relationships to total payments does appear to support the observations made by the DFA witness. However, this initial observation alone is not a sufficient basis for changing the rate of the partial payment. Some significant differences in certain key assumptions were made by the proponents of Proposal 6 from those assumptions used by the Department in comparing pre- and post-reform time periods.

Also of concern is the limitation inherent in comparing a 36-month period to one of only 21 months. The 36-month time period shows price trends rising and falling, while the 21-month time shows a period of generally an upward trend in prices. This may suggest that there has not yet been a sufficient period of elapsed time to infer the impact of downward trends in prices and the possible effect on the relationship between the partial and final payments to producers.

With regard to Leprino's concern about uniformity of partial payment rates between orders, the current milk orders have a variety of partial payment rates. Several orders use a partial payment rate based on a percentage of the previous month's blend price, and the Florida order, for example, provides for two partial payments. Additionally, the Western and Arizona-Las Vegas orders, both of which pool significant volumes of milk used in cheese, provide for partial payment rates of 120 and 130 percent, respectively, of the previous month's lowest class price.

There may be times when the partial payment rate exceeds the balance due for the month. In this regard, handler interests point to this outcome as requiring them to pay more for milk for part of the month than its actual total value for the month. It is appropriate to note that this exact outcome occurred several times during the pre-reform 36-month period used by DFA. This decision finds the concerns of handlers in this regard as unpersuasive.

Deductions authorized by producers are more often made in the final payments for milk. There could be times when the amount deducted from the final payment exceeds the amount of the final payment. If the deductions are high enough for this to happen, it would be reasonable to conclude that producers desiring to smooth their cash flow would opt to allow a larger portion of their deductions to be made with receipt of the partial payment, as the order allows.

The partial payment provision in Federal orders is a minimum requirement placed on handlers to pay producers for milk delivered. It is notable that cooperatives and handlers are not restricted to paying only one partial payment at the rate specified in the order; partial payments for milk can be made more often. Additionally, cooperatives and handlers are also at liberty to negotiate agreements for more frequent billings for milk and payments for milk above the minimum established by the order. As made evident by the record, more flexible partial payment options are available to both producers and handlers than relying solely on changing the minimum payment provisions.

As the Leprino witness noted, DFA's proposal does not incorporate or blend the higher-valued uses of milk in their analysis. In response to this observation, the Department compared the relationships between the partial and total payment using various percentages of the Central order's previous month's blend price. Interestingly, if the desired objective is to more closely approximate the partial payment rate using the 36-month period before order reform, the proponents' 105 percent rate of the previous month's lowest class price does seem to best accomplish this. Nevertheless, the same limitations and concerns mentioned above prevent a finding that the Central order's rate for partial payment should be increased.

This decision finds that the cash flow concerns of producers may be better served by the adoption of other proposals considered in this proceeding. Other amendments adopted in this decision affecting the pooling of milk in the Central order will likely reduce the erosion in the blend price received by Central producers. It is expected that higher blend prices will result from more accurately identifying those producers and the milk of those producers who actually serve the Class I needs of the market. Similarly, the relationship between the partial payment and the total price received by producers may change by the adoption of these pooling standard amendments. Accordingly, a finding that the rate of partial payment to producers by handlers should be increased is not supported by the evidence contained in the record of this proceeding.

4. Determination of Emergency Marketing Conditions

Evidence presented at the hearing establishes that the pooling standards of the Central order are inadequate and result in the erosion of the blend price received by producers who are serving the Class I needs of the market and should be changed on an emergency basis. The unwarranted erosion of such producers' blend prices stems from improper performance standards as they relate to pool supply plants and the lack of limits for pool plant diversions to pool and nonpool plants. These shortcomings of the pooling provisions have allowed milk that does not provide a reasonable or consistent service to meeting the needs of the Class I market to be pooled on the Central order. Consequently, it is determined that emergency marketing conditions exist and the issuance of a recommended decision is therefore being omitted. The record clearly establishes a basis as noted above for amending the order on

an interim basis and the opportunity to file written exceptions to the proposed amended order remains.

Evidence presented at the hearing also establishes that California milk pooled simultaneously on the California State-operated order and the Central Federal order, a practice commonly referred to as double dipping, renders the Central Federal milk order unable to establish prices that are uniform to producers and to handlers and also has contributed to the unwarranted erosion of milk prices to Central producers.

In view of this situation, an interim final rule amending the order will be issued as soon as the procedures are completed to determine the approval of producers.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Central order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid marketing agreement and order:

(a) The interim marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the interim marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Interim Marketing Agreement and Interim Order Amending the Order

Annexed hereto and made a part hereof are two documents, an Interim Marketing Agreement regulating the handling of milk, and an Interim Order amending the order regulating the handling of milk in the Central marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire tentative decision and the interim order and the interim marketing agreement annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

The month of November 2001 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Central marketing area is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The agent of the Department to conduct such referendum is hereby designated to be Donald R. Nicholson, Ph.D.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

Dated: November 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

Interim Order Amending the Order Regulating the Handling of Milk in the Central Marketing Area

This interim order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Central marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The authority citation for 7 CFR part 1032 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

1. Section 1032.7 is amended by:

(a) Revising the introductory text of paragraph (c),

(b) Revising paragraph (c)(1),

(c) Revising paragraph (c)(2),

(d) Removing paragraph (c)(4) and redesignating paragraph (c)(5) as paragraph (c)(4); and

(e) Adding a new paragraph (c)(5).

The revisions read as follows:

§ 1032.7 Pool plant.

* * * * *

(c) A supply plant from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (c)(1) of this section is not less than 20 percent during the months of August through February and 15 percent in all other months of the grade A milk received from dairy farmers (except dairy farmers described in § 1032.12(b)) and from handlers described in § 1000.9(c), including milk diverted pursuant to § 1032.13, subject to the following conditions:

(1) Qualifying shipments may be made to plants described in paragraphs (a) or (b) of this section;

(2) The operator of a pool plant located in the marketing area may include as qualifying shipments milk delivered directly from producer's farms pursuant to § 1000.9(c) or § 1032.13(c). Handlers may not use shipments pursuant to § 1000.9(c) or § 1032.13(c) to qualify plants located outside the marketing area;

* * * * *

(5) Shipments used in determining qualifying percentages shall be milk transferred or diverted to and physically received by pool distributing plants, less any transfers or diversions of bulk fluid milk products from such pool distributing plants.

* * * * *

2. Section 1032.13 is amended by:

(a) Revising paragraph (d)(2)

(b) Redesignating paragraphs (d)(3), (d)(4), and (d)(5), as (d)(4), (d)(5), and (d)(6), respectively.

(c) Adding a new paragraph (d)(3)

(d) Adding a new paragraph (e).

The revision and additions read as follows:

§ 1032.13 Producer milk.

* * * * *

(d) * * *

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 80 percent during the months of August through February, and not more than 85 percent during the months of March through July, provided that not less than 20 percent of such receipts in the months of August through February and 15 percent of the remaining months' receipts are delivered to plants described in § 1032.7(a) and (b);

(3) Receipts used in determining qualifying percentages shall be milk transferred to or diverted to or physically received by a plant described in § 1032.7(a), (b) or (e) less any transfer or diversion of bulk fluid milk products from such plants.

* * * * *

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government maintaining marketwide pooling of returns.

* * * * *

Marketing Agreement Regulating the Handling of Milk in the Central Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1032.1 to 1032.86, all inclusive, of the order regulating the handling of milk in the Central marketing area (7 CFR PART 1032) which is annexed hereto; and

II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____ 2001, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 02–29030 Filed 11–18–02; 8:45 am]

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Federal Register

Tuesday,
November 19, 2002

Part IV

Federal Election Commission

11 CFR Parts 102 and 110

Contribution Limitations and Prohibitions; Final Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 102 and 110

[Notice 2002–22]

Contribution Limitations and Prohibitions

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is issuing these final rules to implement amendments made by the Bipartisan Campaign Reform Act of 2002 (''BCRA'') to the contribution limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended (''FECA'' or ''the Act''). These rules increase the limits on contributions made by individuals and political committees; index certain contribution limits for inflation; prohibit contributions by minors to candidates, authorized committees and committees of political parties and donations by minors to committees of political parties; and prohibit contributions, donations, expenditures, independent expenditures and disbursements by foreign nationals. These rules also revise the Commission's rules for designating contributions to particular elections and attributing contributions to particular donors. Further information is provided in the Supplementary Information that follows.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh, Acting Special Assistant General Counsel (redesignations and reattributions), or Attorneys Mr. Michael G. Marinelli (contribution limitations), Ms. Dawn M. Odrowski (contributions by minors) or Ms. Anne A. Weissenborn (foreign nationals), 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (Mar. 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* This is one of a series of rulemakings the Commission is undertaking to implement the provisions of BCRA.

Section 402(c)(1) of BCRA establishes a general deadline of 270 days for the Commission to promulgate regulations to carry out BCRA. The President of the United States signed BCRA into law on March 27, 2002, so the 270-day deadline is December 22, 2002.

Because of the brief period before the deadline for promulgating these rules, the Commission received and considered public comments expeditiously. The Notice of Proposed Rulemaking (''NPRM'') on which these final rules are based was published in the **Federal Register** on August 22, 2002. 67 FR 54,366 (Aug. 22, 2002). The written comments were due by September 13, 2002. The names of commenters and their comments are available at *http://www.fec.gov/register.htm* under ''Contribution Limitations and Prohibitions.'' The NPRM stated that the Commission would hold a hearing on the proposed rules if it received a sufficient number of requests to testify. After reviewing the comments received and in light of the relatively small number of requests to testify, the Commission decided not to hold a public hearing on this rulemaking. A notice canceling the proposed hearing was published on the Commission's website on October 2, 2002 (*http://www.fec.gov/press/20021002cancel.html*) and in the **Federal Register** on October 7, 2002, 67 FR 62,410 (Oct. 7, 2002).

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on contribution limitations and prohibitions were transmitted to Congress on November 8, 2002.

Introduction

The final rules address five major topics: (1) Increased limits on contributions made by certain persons to candidates, by political party committees to Senate candidates, and by individuals in a 2-year period; (2) indexing of certain contributions limits for inflation; (3) prohibition on contributions, donations, expenditures, independent expenditures and disbursements by foreign nationals; (4) prohibition on contributions by minors to candidates, authorized committees, and committees of political parties and on donations by minors to committees of political parties; and (5) designating contributions to particular elections and attributing contributions to particular contributors.

Four of the five topics involve implementing specific provisions of BCRA. BCRA's amendments to 2 U.S.C. 441a(a) that increase contribution limits for individuals and political committees are implemented by amending 11 CFR 110.1, 110.2 and 110.5 and adding new § 110.17 on indexing the contributions limits for inflation. BCRA's amendments to 2 U.S.C. 441e to strengthen and expand the ban on campaign contributions and donations by foreign nationals is implemented by removing and reserving 11 CFR 110.4(a), the former regulation addressing foreign nationals, and adding new § 110.20. BCRA's ban on contributions by minors to Federal candidates and contributions and donations by minors to committees of political parties at 2 U.S.C. 441k is implemented by removing 11 CFR 110.1(i)(2), the former regulation addressing contributions by minors, and adding new § 110.19.

In light of BCRA's focus on contribution limits, the Commission has also decided to streamline its rules for redesignating contributions for a particular election and reattributing contributions to particular contributors. These changes are reflected in amendments to 11 CFR 110.1(b)(5) and 110.1(k)(3).

Explanation and Justification

11 CFR 102.9 Accounting for Contributions and Expenditures

Recordkeeping requirements play a crucial role in ensuring compliance with FECA's and BCRA's contributions limitations, as noted in the NPRM. 64 FR at 54,372. Accordingly, the Commission sought comment on a variety of proposals to modify the recordkeeping requirements in 11 CFR 102.9. Two commenters were opposed to any change; one noted that electronic records should be sufficient, provided they are in readable form. Another commenter supported the Commission's proposal to require political committees to maintain photocopies or electronic copies of contributors' checks. The Commission has determined that requiring retention of photocopies or electronic copies of contributors' checks will facilitate audits that determine compliance with contribution limits. Therefore, 11 CFR 102.9(a) is amended to require political committee treasurers to maintain either a full-size photocopy or a digital image of each check or written instrument by which a contribution is made. If a political committee elects to retain digital images, it must be prepared to provide the Commission with the computer equipment and software needed to retrieve and read the digital images at no cost to the Commission. New 11 CFR 102.9(a)(4).

Additionally, the Commission is also amending the supporting evidence requirements for redesignations and reattributions in connection with other changes made to redesignations and reattributions, as explained below in the discussion of 11 CFR 110.1(l).

Paragraph (e)(1) of 11 CFR 102.9 is amended to clarify that its requirements apply to contributions designated in writing by the contributor pursuant to 11 CFR 110.1(b)(2)(i), contributions treated as such pursuant to 11 CFR 110.1(b)(2)(ii), contributions redesignated in writing by the contributor pursuant to new 11 CFR 110.1(b)(5)(ii)(A), or contributions designated by presumption pursuant to new 11 CFR 110.1(b)(5)(ii)(B). New paragraph (e)(2) makes the standard for acceptable accounting methods explicit by stating that the committee's records must demonstrate that, prior to the primary election, recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. Additionally, a technical change is made to recodify existing regulatory text as new paragraph (e)(3) in order to clarify that the requirement for candidates not in the general election to refund any contributions designated or treated as contributions for the general election applies to all candidates and authorized committees.

11 CFR 110.1 Contributions by Persons Other Than Multi-Candidate Political Committees

1. 11 CFR 110.1(a) Scope

Section 110.1(a) sets out the scope of the regulations in 11 CFR 110.1. The final rules in this paragraph contain amended citations to the provisions concerning minors and foreign nationals. This final rule is substantially identical to the proposed rule, and the Commission did not receive any comments concerning paragraph (a).

2. 11 CFR 110.1(b)(1) Increases in Limitations on Contributions to Candidates

The Act limits the amount that individuals and certain other persons may contribute to candidates and political committees, including political party committees with respect to Federal elections. 2 U.S.C. 441a(a)(1). The pre-BCRA provisions of the Act permitted persons to contribute up to $1,000 to Federal candidates per election and up to $20,000 per calendar year to political committees established and maintained by national political parties. For contributions made on or after January 1, 2003, BCRA amends 2 U.S.C. 441a(a)(1)(A) to increase the amount persons may contribute to Federal candidates to $2,000 per election. Section 110.1(b)(1), which contains the contribution limitation of 2 U.S.C. 441a(a)(1)(A), is therefore, being amended to incorporate the new increased $2,000 contribution limit. Paragraph (b)(1) in the final rules, with some minor revisions, is substantially identical to proposed paragraph (b)(1) in the NPRM. The Commission did not receive any comments on this provision.

FECA also permits certain persons to contribute up to $5,000 per year to any other political committees. 2 U.S.C. 441a(a)(1)(C). This contribution limit was left unchanged by BCRA. However, BCRA did revise 2 U.S.C. 441a(a)(1) by adding paragraph (D), which permits persons to make up to $10,000 in contributions to a political committee established and maintained by a State committee of a political party in a calendar year. This statutory provision was implemented by the addition of new paragraph (c)(5) to § 110.1. *See* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money Final Rules, 67 FR 49,063 (July 29, 2002).

BCRA mandates that the limit for contributions by individuals and other persons under 2 U.S.C. 441a(a)(1)(A) be increased every odd-numbered year by the percentage difference in the price index between the current year and the base year of 2001. 2 U.S.C. 441a(c)(1)(B). The mechanics of the indexing are set forth in 11 CFR 110.17, which is discussed below. However, in order to alert the reader that the contribution limits are adjusted every two years, § 110.1(b)(1)(i) contains a cross reference to section 110.17. Additionally, paragraph (b)(1)(ii) sets forth the 2-year time period in which the increased contribution limits are to be in effect. That 2-year period starts the day after the previous general election and ends on the day of the next regularly scheduled general election.

Because the contribution limits may change every two years, depending upon the consumer price index, paragraph (b)(1)(iii) states that the Commission will publish the new contribution limits in effect in the **Federal Register** every odd-numbered year and maintain that information on its website. One commenter supported this change.

3. 11 CFR 110.1(b)(3) Net Debts Outstanding

The NPRM raised the issue of the effect of the increase on contribution limits due to the inflation adjustment on contributions made after an election that are used to satisfy the net debts outstanding of a candidate's authorized committees related to that previous election. The NPRM sought comment on the following hypothetical: If the contribution limit were to be increased from $2,000 to $2,100, effective November 3, 2004, and contributor X makes a $2,000 contribution to candidate Y in October of 2004, could contributor X make a $100 contribution after November 3, 2004 designated for that general election, provided that candidate Y's principal campaign committee still has net debts outstanding?

The Commission received several comments concerning this issue. All the commenters who addressed this, including the Congressional sponsors of BCRA, argued against permitting the increase in the contribution limits to apply to contributions made to pay off net debts outstanding from any election held prior to the increase in the contribution limits. Instead, these commenters proposed that any increased contribution limits should only apply to elections held after the date on which the indexing triggers a higher contribution limit. Several of these commenters noted the confusion that would ensue for both contributor and recipient committees if multiple contribution limits applied to the same election. The Commission agrees with this reasoning. In addition, it finds no evidence that Congress intended candidates in a deficit position after an election to have the benefit of accepting larger contributions than candidates who have no debts outstanding for that election. Consequently, the Commission is persuaded that the increase in the contribution limits should not be applied to previous elections. This interpretation will reduce the occurrence of multiple changes to the contribution limits for elections. The Commission also notes that the retroactive application of 2 U.S.C. 441a(c)(1)(C) specifically begins on the date after the previous general election, and can thus be construed to mean that the increase in the contribution limits does not apply to any previous election.

To make clear that the increase in contribution limits cannot be used to retire net debts outstanding from previous elections, the Commission is amending § 110.1(b)(3)(iii). This regulation sets forth the conditions under which candidates may accept contributions to retire net debts outstanding after the date of a previous primary or general election. The Commission is renumbering the two existing conditions as paragraphs (b)(3)(iii)(A) and (B) and is adding the

additional requirement at paragraph (b)(3)(iii)(C) that contributions received for net debts outstanding arising from previous elections do not exceed the contribution limitations in effect on the date of such election.

4. 11 CFR 110.1(b)(5)(ii) Redesignations

A. Introduction

In the NPRM, the Commission stated that BCRA's renewed focus on contribution limits coincided with the Commission's consideration of updating and streamlining its rules for designating contributions for a particular election or attributing contributions to particular contributors. *See* NPRM, 67 FR at 54,371. Under existing regulations, all contributions are either designated in writing by the contributor, 11 CFR 110.1(b)(2)(i), or treated as contributions for the next election after the contribution is made. 11 CFR 110.1(b)(2)(ii). This is in order to ensure that no person contributes more than the individual contribution limit to any candidate with respect to a particular election. 2 U.S.C. 441a(a)(1)(A). Commission regulations permit political committees in certain circumstances to obtain a written redesignation signed by the contributor. 11 CFR 110.1(b)(5)(ii). The Commission presented proposed rules in the NPRM that would permit the authorized committees of candidates to redesignate contributions pursuant to a presumption in certain circumstances. NPRM, 67 FR at 54,376. Additionally, the NPRM proposed amending the rules pertaining to reattribution of contributions similar to the rules on redesignation. This proposal is addressed in the Explanation and Justification for 11 CFR 110.1(k)(3)(ii), discussed below.

One commenter applauded the Commission's consideration of the contribution redesignation regulations that it characterized as ''confusing and burdensome both for committees and contributors.'' In contrast, several commenters noted that BCRA neither requires nor anticipates a reexamination of the redesignation rules. BCRA's silence on these issues led one commenter to the conclusion that these issues would be more appropriately addressed in a separate rulemaking that does not arise from BCRA, while another found the Commission's reexamination well-timed, as an effort to simplify FECA compliance generally, which will improve the ability of political committees to comply with the new requirements of BCRA. In light of the new contribution limits and other statutory changes in BCRA, the Commission has concluded that this rulemaking provides an appropriate vehicle for simplifying the rules governing redesignation.

B. 11 CFR 110.1(b)(5)(ii)(A) Existing Redesignation Rule

Because the Commission has decided to provide for an alternative method for redesignation of contributions, 11 CFR 110.1(b)(5)(ii) requires a technical amendment in order to incorporate the new provision within this section. Thus, this rulemaking redesignates former 110.1(b)(5)(ii)(A) and (B) as 110.1(b)(5)(ii)(A)(1) and (2), respectively. This rulemaking does not amend the regulatory language of these provisions.

C. 11 CFR 110.1(b)(5)(ii)(B) Redesignation of Certain Excessive Primary Contributions

Current 11 CFR 110.1(b)(5) sets forth the procedure for the redesignation of excessive contributions to candidates and authorized committees from any person, except multicandidate committees and those persons prohibited from making contributions. *See* 11 CFR 110.1(a). When seeking a redesignation of an excessive contribution, a committee treasurer must offer the contributor a refund and obtain a signed, written redesignation from the contributor within 60 days of the treasurer's receipt of the contribution. *See* 11 CFR 110.1(b)(5)(ii). These requirements apply to excessive contributions that were designated in writing by the contributor, 11 CFR 110.1(b)(5)(i)(A) and (B), or that were not designated in writing by the contributor, 11 CFR 110.1(b)(5)(i)(C) and (D), in which case 11 CFR 110.1(b)(2)(ii) treats the contributions as made for the next election for that Federal office after the contributions are made.[1] In addition to written redesignations, the Commission is amending 11 CFR 110.1(b)(5) to permit authorized committees to redesignate contributions that would otherwise be excessive without obtaining a signed, written document under certain circumstances, as discussed below.

As proposed in the NPRM, the Commission is amending these regulations to include a mechanism to simplify redesignation procedures for certain excessive primary contributions by using a presumption. *See* NPRM, 67 FR at 54,371, new 11 CFR 110.1(b)(5)(ii)(B). This presumption applies only when a contributor makes an excessive contribution to a candidate's authorized committee before a primary election that is not designated in writing for a particular election. In such circumstances, a candidate's authorized committee may presume that the contributor intended to contribute any excessive amount to that candidate's general election, without obtaining written permission from the contributor to treat the excess as a general election contribution. This presumption should not be inferred, however, in instances where the contributor has expressly designated a contribution in writing for a different election.

The Commission agrees with the commenter who noted the reasonableness of a presumption that a contributor of a large contribution to a primary election campaign would also support the general election campaign of the same candidate. That commenter reasoned that the primary and general elections occur in the same year and are two stages of one process to elect a candidate to a particular office. However, the Commission disagrees with another commenter who argued that written redesignations most often serve as barriers to contributor intent, which in the commenter's view is generally to support the candidate to the maximum extent possible. The Commission retains its rules on written redesignations in all other situations described in 11 CFR 110.1(b)(5)(i)(A) through (D). Only in the specific circumstance presented in new 11 CFR 110.1(b)(5)(ii)(B) will the presumption suffice to replace a written redesignation.

Thus, the Commission is revising § 110.1(b)(5)(ii)(B) to permit an authorized committee to redesignate excessive contributions to the general election if the following conditions are satisfied. First, the contribution must be made before the primary election. Second, the contribution must not have been designated in writing for another election. Third, the contribution would be excessive if treated as a contribution made for the primary election, and fourth, the redesignation does not cause the contributor to exceed any other contribution limit. These conditions are set forth in paragraphs (b)(5)(ii)(B)(*1*) through (*4*), respectively. The committee must be permitted to accept general election contributions in order to designate contributions by presumption. Therefore, if a presidential candidate's

[1] These requirements apply whether the contributions are excessive on their face or in aggregation with other contributions, 11 CFR 110.1(b)(5)(i)(A) and (C), or were designated for an election and were made after the election, but cannot be accepted because the contributions exceed net debts outstanding from the past election, 11 CFR 110.1(b)(5)(i)(B), or were received after an election but undesignated, and the authorized committee has net debts outstanding from the previous election. 11 CFR 110.1(b)(5)(i)(D).

authorized committee accepts public funding in the general election, the presumption is available to any such committees only to the extent they are permitted to accept contributions to a general election legal and accounting compliance fund. The final rule also requires that the authorized committee notify the contributor of the redesignation. This requirement is discussed in further detail below.

D. 11 CFR 110.1(b)(5)(ii)(B)(5) and (6) Notice to Contributors

With respect to the redesignation of certain primary contributions, the NPRM included two alternatives, Alternatives 1–A and 1–B. *See* proposed 11 CFR 110.1(b)(5)(ii)(B), NPRM, 67 FR at 54,371 and 54,376. The alternatives differed in whether an authorized committee employing the presumption to redesignate a contribution would be required to notify the contributor that such action is being taken. Alternative 1-A would not have required any notification to the contributor, while Alternative 1-B would have required notification through the addition of paragraphs (b)(*5*)(ii)(B)(*5*) and (*6*). *See* NPRM, 67 FR at 54,371 and 54,376.

Alternative 1–A was designed to minimize the administrative burden on authorized committees when a contributor's intent could be reasonably inferred. *See id.* at 54,371. Some commenters preferred this approach. One viewed it as a better balance between the Commission's need to ensure that committees follow procedures and the committees' need for flexibility. Greater flexibility for the committees was the basis for another commenter's support. Another found Alternative 1–A to be consistent with contributor intent and with BCRA's change in the individual aggregate contribution limit from an annual to an election cycle basis. *See* 2 U.S.C. 441a(a)(3). The Commission notes, however, that BCRA changes the individual aggregate contribution limit to a bi-annual basis that only approximates the election cycle for the U.S. House of Representatives. More importantly, Congress did not change the per candidate contribution limits from a per-election to an election-cycle basis.

Alternative 1–B in the Commission's proposal would have required that the authorized committee inform the contributor that a portion of the contribution is being redesignated to the general election, and that the contributor may request a refund instead. As with Alternative 1–A, no confirmation from the contributor would have been required.

This alternative attracted the support of several commenters, as well. One commenter found that the presumption combined with notice to the contributor reasonably approximates contributor intent, with notice ensuring that any other contributor intent can be honored. Similarly, another argued Alternative 1–B strikes the appropriate balance between the administrative burden imposed on authorized committees and the need to honor contributor intent, noting that some primary election contributors might plan to support a different candidate in the general election. Another commenter supported the notice required under Alternative 1–B because it would provide an opportunity for the contributor to ''opt-out'' and receive a refund, instead of permitting the redesignation, and because it is more likely to prevent the contributor from inadvertently making an excessive contribution to the general election.

The Commission has determined that notifying contributors is necessary when authorized committees redesignate excessive contributions that were initially considered primary contributions by operation of 11 CFR 110.1(b)(2)(ii) to be general election contributions. The Commission has therefore adopted Alternative 1–B as proposed in the NPRM, with clarification to the notice procedure as described below. *See* NPRM, 67 FR at 54,371 and 54,376. The Commission believes that, in the precise circumstances discussed, it is reasonable to infer that the contributor of an otherwise excessive primary contribution would likely not object to redesignating a portion of that contribution to the general election campaign. The contributor's check establishes the contributor's intent to contribute the funds to the candidate's authorized committee. The contribution limits in FECA prohibit the excessive contributions at issue, so the presumption permits the authorized committee to honor the contributor's intent in a manner that avoids a violation of law by both the recipient committee and the contributor.

The notice and refund procedure serves to confirm the presumption that a contributor of an excessive, undesignated contribution to the primary election would consent to a redesignation of the excessive portion of the contribution to the general election. The authorized committee may assume acquiescence on the part of the contributor if the contributor does not respond to the notification. However, if the contributor does not want the contribution to be redesignated, the notice provides a mechanism by which the contributor may object to the redesignation and request a refund or a reattribution under 11 CFR 110.1(k)(3)(ii). Additionally, the Commission notes that the trigger for a committee's use of the presumption—an undesignated excessive contribution—suggests the contributor may benefit from information about the contribution limits in FECA. Contributors need to know if a contribution was redesignated or reattributed so that they can avoid an inadvertent excessive contribution. Any authorized committee that seeks to retain a contribution that would otherwise constitute a violation of law can fairly be required to notify the contributor of the means by which it has remedied the violation of law. Thus, new paragraph (b)(5)(ii)(B)(*5*) requires the treasurer to notify the contributor of the redesignation and provide an opportunity to the contributor to request a refund. In such a notice, the committee may, if it wishes, also seek a written reattribution under 11 CFR 110.1(k)(3)(ii)(A); however, authorized committees are not required to include this information in the notice pursuant to 11 CFR 110.1(b)(5)(ii)(B)(*5*).

Authorized committees may notify contributors by paper mail, email, fax, or any other written method. The authorized committee must do so within sixty days of the treasurer's receipt of the contribution. *See* new 11 CFR 110.1(b)(5)(ii)(B)(*6*). The notice must be written in order to avoid opportunities for fraud, so the option to communicate orally has been deleted from paragraph (b)(5)(ii)(B)(*6*). The sixty-day requirement protects contributor intent by providing notice on a reasonably contemporaneous basis.

E. 11 CFR 110.1(b)(5)(ii)(C) Redesignation of Certain Excessive General Election Contributions

The Commission sought comment on whether to permit backward-looking presumptions, so that excessive general election contributions received after a primary election could be designated by an authorized committee to pay off primary debt. *See* NPRM, 67 FR at 54,371. Three commenters favored a backward-looking presumption in certain circumstances. One supported the presumption in the situation described, provided that the authorized committee has net debts outstanding for the primary election. Another supported the presumption, provided that it is limited to elections in the same election cycle. A third supported the presumption, provided that the contributor receives notice. Finally, one commenter argued against such a

backward-looking presumption because it would require more complex considerations by the contributors. However, the Commission notes that the burden of calculating net debts outstanding for the primary election falls on the authorized committees, not on the contributors.

The Commission has determined that the backward-looking presumption, in limited circumstances, should apply subject to the same conditions as the redesignation presumption in 11 CFR 110.1(b)(5)(ii)(B). The Commission notes that current 11 CFR 110.1(b)(3)(iv) permits a candidate in the general election to pay primary election debts and obligations with general election contributions. Thus, if a contributor designates in writing that a non-excessive contribution should be considered for the general election, the recipient committee may nonetheless use those funds to pay primary debts, pursuant to 11 CFR 110.1(b)(3)(iv). In this situation, it would be incongruous if a recipient committee had less flexibility with contributions that are *not* designated in writing than it would have with those that are designated in writing.

Consequently, the Commission has incorporated such a presumption in new 11 CFR 110.1(b)(5)(ii)(C). The presumption can be applied to an excessive contribution that is made after the primary election date, but before the general election and that was not designated in writing by the contributor. 11 CFR 110.1(b)(5)(ii)(C)(*1*) and (*2*). The committee must have more net debts outstanding as calculated under 11 CFR 110.1(b)(3)(ii) from the primary than the excessive portion of the contribution. 11 CFR 110.1(b)(5)(ii)(C)(*5*). The conditions in 11 CFR 110.1(b)(5)(ii)(C)(*3*), (*4*), (*6*), and (*7*) are similar or identical to the conditions set forth in 11 CFR 110.1(b)(5)(ii)(B)(*3*), (*4*), (*5*), and (*6*), respectively. It is important to note, however, that if a contributor makes an excessive contribution and designates the contribution in a signed writing for the general election, then the authorized committee would be required to obtain a signed writing from the contributor to redesignate any portion of the contribution to the primary. *See* new 11 CFR 110.1(b)(5)(ii)(C)(*2*).

5. 11 CFR 110.1(c) Contributions to Political Party Committees

The pre-BCRA provisions of the Act permitted persons to contribute up to $20,000 per calendar year to the political committees established and maintained by the national political parties. BCRA amends 2 U.S.C. 441a(a)(1)(B) to increase the amount that may be contributed by individuals and certain other persons to political committees established and maintained by national political parties to $25,000 per calendar year. Consequently, the Commission is amending 11 CFR 110.1(c)(1) to increase the amount that may be contributed by those covered by 2 U.S.C. 441a(a)(1)(B) to committees established and maintained by national political parties to $25,000 per year. No comments were received on this change. Paragraph (c)(2) of this section provides that these committees consist of the national committees, and the House and Senate campaign committees.

The Commission is adding new paragraphs (c)(1)(i), (ii) and (iii) to § 110.1. These paragraphs parallel new paragraphs (b)(1)(i), (ii) and (iii) discussed above. Paragraph (c)(1)(i) provides for application of the indexing provisions at 11 CFR 110.17 to the contribution limitation for contributions to national party committees. New paragraph (c)(1)(ii) establishes the two-year period in which the indexing is applied. New paragraph (c)(1)(iii) provides for the periodic publication by the Commission of the increased contribution limits. When proposed in the NPRM, the new paragraphs (c)(1)(i) and (c)(1)(iii) received no comments. These paragraphs are left substantially unchanged from the NPRM in the final rules. The comments relating to paragraph (c)(1)(ii) regarding the timing of the increase in the contribution limit due to the application of the indexing provisions are addressed below in the Explanation and Justification for new § 110.17.

6. 11 CFR 110.1(i) Contributions by Spouses

As explained below in the Explanation and Justification for new 11 CFR 110.19, 2 U.S.C. 441k prohibits contributions made by minors to Federal candidates and contributions and donations to committees of political parties, but it does not prohibit contributions or donations to other types of political committees such as corporate and labor organization separate segregated funds and non-connected political committees (often referred to as ''PACs'').

The proposed rules would have amended the pre-BCRA provision governing contributions by minors at former 11 CFR 110.1(i)(2) to reflect this point. The Commission has decided instead to move the pre-BCRA minors provision to new 11 CFR 110.19 so that all of the provisions regarding minors are addressed in one section of the regulations. Therefore, the final rules move the minors provision at former 11 CFR 110.1(i)(2) to new 11 CFR 110.19(d). As a result of this move, § 110.1(i) addresses only contributions by spouses, a provision that is unchanged. Therefore the final rules amend the title of paragraph (i) to ''Contributions by Spouses'' to reflect the remaining focus of this paragraph.

7. 11 CFR 110.1(k)(3)(ii) Reattribution

A. Introduction

In connection with the proposed amendments to the redesignation rules, the NPRM also included a similar proposal to amend the reattribution rules. Current 11 CFR 110.1(k)(3) sets forth the procedures for the reattribution of excessive contributions to other joint contributors. Contributions from more than one person must include each contributor's signature, and each such contributor is attributed an equal share of the contribution unless other instructions are provided. 11 CFR 110.1(k)(1) and (2). A committee may ask a contributor who made an excessive contribution if a joint contribution was intended. 11 CFR 110.1(k)(3)(i). In order to reattribute a contribution in such a situation, a committee treasurer must offer the contributor a refund and must obtain within sixty days of the contribution a written reattribution signed by each of the contributors. 11 CFR 110.1(k)(3)(ii). (Unlike redesignation, which is limited to authorized committees because of the relationship of the contribution to particular elections pursuant to 2 U.S.C. 441a(a)(1)(A), the reattribution procedure is available to all political committees, any of which could receive joint contributions.) The commenters who supported the Commission's proposal to amend the redesignation rules also supported the proposal to amend the reattribution rules for the same reasons. Likewise, commenters who did not favor the Commission's proposal regarding redesignation also did not support amending the reattribution rules at this time.

B. The Proposal and Comments

The Commission proposed a presumption related to reattribution in the NPRM. When funds are contributed by a check or other written instrument with two or more names imprinted on the check, but with only one signature, the entire contribution is attributed to the individual whose signature appears on the check. *See* 11 CFR 104.8(c) and 110.1(k)(1). Alternatives 2–A and 2–B in proposed 11 CFR 110.1(k)(3)(ii)(B) in the NPRM both included a presumption that with respect to such contributions that are excessive, a committee would

be permitted to presume that the contribution should be attributed equally among those whose names appeared on the check or other instrument. *See* NPRM, 67 FR at 54,371 and 54,377. Like the redesignation alternatives, Alternative 2–B would have required the recipient committee to notify the contributors, while Alternative 2-A would not have required any notice. *See id.*

Three commenters opposed both Alternatives 2–A and 2–B. The three agreed that inferring a non-signer's intent to contribute in the absence of any indication from that individual is extremely unreliable and carries a greater risk of error than the redesignation presumption. One commenter observed that the non-signer might not support the same candidates and political committees that the signer supports. Even if he or she does support the same candidates, if the non-signer is unaware of the contribution, he or she may inadvertently make an excessive contribution to the same committee. Another of the three found Alternative 2–B unacceptable because the burden of ''opting-out,'' that is, choosing to request a refund instead of permitting the reattribution, would be on the contributor, whereas the commenter believed the burden should be on the recipient committee. A fourth commenter agreed with the presumption, arguing that contributors do not generally believe more than one signature would be required because usually only one person signs a particular check. This commenter also argued that any indication of intent to make a joint contribution should suffice, citing examples of accompanying correspondence, a donor card, or a notation on a check. Under such circumstances, this commenter would not require notification. In the absence of any indication of such an intent, this commenter supports the approach of Alternative 2–B, which would require the recipient committee to notify the contributors of the reattribution.

C. 11 CFR 110.1(k)(3)(ii)(A) Existing Reattribution Rule

Because the Commission has decided to provide for an alternative method for reattribution of contributions, 11 CFR 110.1(k)(3)(ii) requires a technical amendment in order to incorporate the new provision within this section. Thus, this rulemaking redesignates former § 110.1(k)(3)(ii)(A) and (B) as § 110.1(k)(3)(ii)(A)(1) and (2), respectively. This rulemaking does not amend the regulatory language of these provisions.

D. 11 CFR 110.1(k)(3)(ii)(B) Presumption of a Reattribution

The Commission has concluded that the changes required by BCRA provide an appropriate occasion to promulgate regulations that will provide authorized committees with additional means of reattributing certain contributions. Thus, it has adopted Alternative 2–B with two modifications. Under paragraph (k)(3)(ii)(B)(*1*), if an excessive contribution is made with a written instrument with more than one individual's name imprinted upon it, but only one signature, the permissible portion of the contribution will be attributed to the signer, and the committee may reattribute any excessive portion of the contribution to any other individual whose name is imprinted on the written instrument. Thus, the final rule differs from the proposed rule in that the proposed rule would have divided excessive contributions equally among the names listed on the check. The final rule takes a different approach in order to attribute the maximum permissible amount to the signer because that contributor's intent is clear. Only excessive funds would be reattributed pursuant to the presumption to another contributor whose name appears preprinted on the check, and only to the extent that this reattribution would not cause that other individual to exceed his or her contribution limit.

The Commission has determined that notice to the contributors is essential to make any presumption in this situation reasonable. The political committee employing this presumption is required to notify all contributors and offer the signer contributor a refund under paragraph (k)(3)(ii)(B)(*2*).

As noted in the NPRM, the Commission and political committees have devoted significant resources to ensure compliance with the reattribution requirements. The Commission agrees with the commenter who noted that joint contributors often indicate their intention to jointly contribute in some fashion other than by both signing one personal check. However, the Commission also agrees that a presumption based only on an individual's name appearing on a check is not reliable standing alone. Consequently, the Commission is adopting the requirement that political committees notify all of the joint contributors to whom any portion of the contribution is reattributed. The committee may make the notice in any written form and must do so within sixty days of the treasurer's receipt of the contribution. *See* new 11 CFR 110.1(k)(3)(ii)(B)(*3*). The sixty-day requirement protects contributor intent by providing notice on a reasonably contemporaneous basis. Like the redesignation notice provision, section 110.1(k)(3)(ii)(B)(3) has been clarified to permit notice by any written method, including email. Authorized committees may, if they choose, provide contributors with a single notice as to any permissible redesignation and any permissible reattribution.

E. Other Proposals Relating to Redesignation and Reattribution for Which No Changes to the Rule Are Being Made

(1) 11 CFR 110.2 Multicandidate Contributions

Current 11 CFR 110.2(b)(5) sets forth the procedure for redesignation of excessive contributions made by multicandidate committees. In the NPRM, the Commission asked commenters to address whether excessive contributions from multicandidate committees should be subject to any form of redesignation by presumption. Only one commenter supported any such application, while two opposed it. These two argued that a signed writing should be required from multicandidate committees because these committees are likely to be sufficiently familiar with the existing Commission requirements so that the higher standard of specificity required from them is not burdensome. The Commission agrees that the redesignation presumption is inappropriate for multicandidate committees, so no change has been made to 11 CFR 110.2.

(2) Expanding the Redesignation Presumption Beyond the Election Cycle

The Commission also asked in the NPRM if presumptions that would permit authorized committees to redesignate contributions beyond the current election cycle to either earlier or subsequent cycles were appropriate. *See* NPRM, 67 FR at 54,371. Only one commenter supported any presumption that reaches beyond a current cycle; that commenter argued that redesignations to elections in future cycles were acceptable if the contributors were notified. The other commenters argued that any presumptions should be limited to the current cycle. One said inferring donative intent would be difficult as the extent to which a contributor supports a candidate can vary significantly from one election cycle to another. Another noted that this might be so because candidates' positions on issues can change, and

candidates are likely to face different opponents in previous or subsequent cycles. Another noted that recordkeeping would be complicated for the committees (which may change from one election to the next), the contributors, and the Commission if such a presumption were adopted. The Commission agrees with many of these comments and has decided to limit the redesignation and reattribution presumptions to within one election cycle.

(3) Separate Accounts for Redesignated Contributions

The Commission asked in the NPRM if it should revise 11 CFR 102.9 to require that an authorized committee maintain a separate account for general election contributions accepted before the primary election occurs. *See* NPRM, 67 FR at 54,371–72. Three commenters addressed this proposal. Two commenters who opposed the requirement stated that separate accounts are unnecessary. One argued that the public record consists of all of a candidate committee's accounts combined, even if the funds are in fact in separate accounts. Consequently, they argued that the public record, which specifies to which election contributions are designated, would not be augmented by a committee's maintenance of separate accounts. Should an authorized committee be subject to a Commission audit, this commenter argued that the Audit Division is capable of calculating whether a committee spent general election funds on the primary election campaign. Another commenter noted that separate accounts do not ''specifically aid in compliance'' and that separate accounts are not required by BCRA. One commenter supported the requirement, arguing that the Commission has a valid concern regarding the use of general election funds in a primary election campaign, which could permit the contributor and the committee to effectively double the contribution limit with respect to the primary election. This commenter also argued that separate accounts are a modest burden for committees and may be preferable to maintaining separate books and records.

Although the Commission believes maintaining a separate account is the best way for an authorized committee to show its compliance with the prohibition on spending general election contributions in connection with a primary election, the Commission is reluctant to require that authorized committees maintain separate accounts when other means of accounting, which may be better suited to an organization, will suffice to prevent the use of general election contributions in connection with a primary election. Consequently, the Commission declines to amend 11 CFR 102.9 in this regard.

(4) Eliminating the Signature Requirements

The Commission sought comment on whether it should eliminate the signature requirement for all redesignations and reattributions under 11 CFR 110.1 and 110.2, and instead permit authorization from the contributor by email or through oral communications with the contributor when the recipient committee creates and maintains a contemporaneous signed record of the conversation. *See* NPRM, 67 FR at 54,371.

All of the commenters who addressed this issue thought an email should suffice, instead of a writing signed by the contributor. Some commenters were opposed to permitting committees to memorialize conversations to serve as documentation of redesignations or reattributions, as discussed above in connection with 11 CFR 110.1(l).

In adopting the new means of redesignation and reattribution in 11 CFR 110.1(b)(5)(ii)(B), 110.1(b)(5)(ii)(C), and 110.1(k)(3)(ii)(B), the Commission has concluded that no contributor response is required for the reattributions and redesignations pursuant to the new presumptions, so no contributor signature is required. However, the designation and attribution regulations require contributor signatures in other instances. *See, e.g.,* 11 CFR 110.1(b)(4)(ii), new 110.1(b)(5)(ii)(A)(*2*), 110.1(k)(1), and new 110.1(k)(3)(ii)(A)(*2*). In these situations, the regulations require a response from the contributor, and thus require the response to be in writing and signed by the contributor in order to prevent fraud and to clearly indicate who is contributing. *Cf.* 11 CFR 104.8(c) (requiring contributions to be reported as made by the last person signing the instrument). While email may be an appropriate vehicle for contacting contributors such as new 11 CFR 110.1(b)(5)(ii)(B)(*6*) and (C)(*7*) or for contributor responses in some instances, it may raise complicating issues that have not been addressed in this rulemaking. For example, with respect to reattributions, how could a committee determine whether both contributors have consented to the reattribution? The Commission has concluded that permitting email to replace a contributor's signature should be undertaken in connection with a rulemaking that considers all of the instances in Commission regulations in which this issue is present, rather than making that change in some instances, but not others, and in the absence of a full consideration of issues similar to the one raised above. Therefore, the Commission has concluded that existing rules should not be amended in this rulemaking to eliminate the signature requirements across the board or to permit email messages to take the place of signed written redesignations or reattributions under revised 11 CFR 110.1(b)(5)(ii)(A)(*2*) or 11 CFR 110.1(k)(3)(ii)(A)(*2*). Consequently, no further changes to the regulations are being made in this rulemaking.

8. 11 CFR 110.1(l)(4) and (5) Supporting Evidence

As noted in the NPRM, the adoption of the notification approach requires 11 CFR 110.1(l)(4) to be amended to specify the supporting evidence required to be retained under such an approach. *See* NPRM, 67 FR at 54,371. A full-size copy of the check or written instrument, any signed writings from the contributors that accompanied the contribution, and the political committee's notices required for redesignations under 11 CFR 110.1(b)(5)(ii)(B) or (C) or reattributions under 11 CFR 110.1(k)(3)(ii)(B) are included among the supporting evidence that must be retained for the redesignation or reattribution to be effective. *See* new 11 CFR 110.1(l)(4)(ii). Paragraph (l)(5) has also been revised to state that if a political committee fails to retain the notices, then the presumptions for the redesignations or the reattributions will not be effective.

Some commenters supported the proposal that would have permitted committees to orally notify contributors and write a memorandum regarding the conversation to document it. Others opposed this aspect of the proposal as an inherently unreliable process that would provide too great an opportunity for fraud and abuse. The Commission agrees with the latter comments, so the final rules with regard to the redesignation and reattribution presumptions require the notice to be in writing, including by email. *See* new 11 CFR 110.1(b)(5)(ii)(B)(*6*); 110.1(b)(5)(ii)(C)(*7*); and 110.1(k)(3)(ii)(B)(*3*).

One technical correction is included in 11 CFR 110.1(l)(5) as well. The citation to paragraph (l)(2) in the first sentence should be to paragraph (l)(1) instead.

11 CFR 110.2 Contributions by Multicandidate Political Committees

Section 110.2 sets forth the dollar limits on contributions made by multicandidate committees, as generally established by 2 U.S.C. 441a(a)(2). BCRA substantially amended the contribution limit for certain types of multicandidate committees specified in 2 U.S.C. 441a(h), which is addressed in § 110.2. As a result, the Commission is amending the regulations to reflect the new limits set forth in more detail below.

Under pre-BCRA 2 U.S.C. 441a(h), the Republican and Democratic Senatorial campaign committees or the national committee of a political party or any combination of such committees were permitted to contribute up to $17,500 to a candidate for election or nomination for election to the U.S. Senate during the year of the election. BCRA amends this section of the Act to increase the amount that may be contributed by these committees to Senatorial candidates to $35,000 on or after January 1, 2003. Consequently, 11 CFR 110.2(e), which contains this contribution limit, is being amended to increase the limit to $35,000.

New paragraph (e)(1) sets forth the amended contribution limit. The Commission did not receive any comment on its proposal to amend paragraph (e)(1). New paragraph (e)(2) parallels the provisions in § 110.1(c)(1)(i), (ii) and (iii) and 110.1(b)(1)(i), (ii) and (iii). New paragraph (e)(2) provides for the application of the indexing provisions at 11 CFR 110.17 to this contribution limitation and establishes the two-year period in which the increased contribution limits are in effect. New paragraph (e)(2) also provides for the periodic publication by the Commission of the increased contribution limit. When first proposed in the NPRM, this paragraph received one comment supporting the intention to publish information regarding the adjusted contribution limit. The comments relating to paragraph (e)(2) that concern the timing of the increase in the contribution limit due to the application of the indexing provisions are addressed in the Explanation and Justification for new § 110.17, below.

11 CFR 110.4 Contributions in the Name of Another; Cash Contributions

Previously, 11 CFR 110.4(a) set forth regulations implementing the prohibitions on contributions and expenditures by foreign nationals codified at 2 U.S.C. 441e. In light of the amendments to 2 U.S.C. 441e contained in BCRA, § 110.4(a) is being removed and reserved, and new 11 CFR 110.20 is being created to implement BCRA's prohibition on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals.

In addition, the section heading has been changed to cover the two topics addressed in this section: (1) Contributions made in the name of another and (2) cash contributions.

11 CFR 110.5 Aggregate Bi-Annual Contribution Limitations for Individuals

Aside from the limits on the dollar amounts that individuals may contribute to candidates and political committees, 2 U.S.C. 441a(a)(3) also contains aggregate limits on the amount that individuals may give within a specified period of time. These contribution limits are set forth in the Commission's regulations at 11 CFR 110.5. However, as with §§ 110.1 and 110.2 discussed above, BCRA substantially amended the FECA by restructuring the aggregate contribution limits. As a result, the Commission is amending the regulations in § 110.5 to reflect the new contribution limits in BCRA.

1. 11 CFR 110.5(a) Scope

Section 110.5(a) sets forth the scope of the regulations in 11 CFR 110.5. The final rules in this paragraph contain amended citations to the provisions concerning minors and foreign nationals. This final rule is identical to the proposed rule, on which the Commission received no comments.

2. 11 CFR 110.5(b) Bi-Annual Limitations

BCRA amends the provisions in FECA that establish the total amount of contributions that may be made by individuals within the prescribed time periods. Under former 2 U.S.C. 441a(a)(3), individuals were permitted to make no more than $25,000 in aggregate contributions per calendar year. This section was revised by BCRA to establish new bi-annual aggregate limits that permit individuals to make up to $95,000 in contributions, including up to $37,500 in contributions to candidates and their authorized committees, and up to $57,500 in contributions to any other political committees. 2 U.S.C. 441a(a)(3)(A) and (B). The $57,500 aggregate contribution limit contains a further restriction in that no more than $37,500 of this amount may be given to political committees that are not the political committees of national political parties. 2 U.S.C. 441a(a)(3)(B).

Current 11 CFR 110.5(b) is being amended to incorporate the increased bi-annual aggregate contribution limits, which are effective on January 1, 2003. New paragraph (b)(1)(i) contains the new bi-annual aggregate limit for contributions to candidates and their authorized committees. New paragraph (b)(1)(ii) contains the new bi-annual aggregate limit for contributions to other political committees. The Commission received no comments on the changes to paragraphs (b)(1)(i) and (ii) of this section.

Sections 441a(i)(1)(C) and 441a–1(a)(1)(B) of FECA contain an exception to the bi-annual contribution limits for individuals. Under these new provisions of BCRA, the individual contribution limits to candidates for the U.S. House of Representatives and U.S. Senate are increased during certain limited time periods if the candidate is opposing another candidate who makes expenditures from his or her personal funds above a certain threshold. Contributions made under these increased dollar limits do not apply to the individual contributor's bi-annual aggregate limits. 2 U.S.C. 441a(i)(1)(C) and 441a–1(a)(1)(B). Accordingly, new § 110.5(b)(2) reflects this exception, which will be addressed in greater detail in a separate rulemaking concerning the so-called ''millionaires'' amendment.'' One commenter, while agreeing generally with proposed paragraph (b)(1)(iii), suggested that the language in the draft rule was not direct enough in making this point. The Commission agrees and thus, new paragraph (b)(2) states more precisely the circumstances under which the individual bi-annual limits on contributions do not apply to contributions coming under 2 U.S.C. 441a(i)(1)(C) or 441a–1(a)(1)(B).

Section 110.5(b)(3) provides for the increase, if necessary, in the bi-annual aggregate contribution limits by the percent difference in the price index, as described in 11 CFR 110.17. The issues relating to the relationship of the statutory time frame for aggregating contributions and the inflation adjustment time frame are discussed below regarding 11 CFR 110.17(b). New paragraph (b)(4) states the Commission's intention to publish information regarding the adjusted contribution limits in the **Federal Register** and on the Commission's Web site. One commenter supported publishing the adjusted contribution limits. New paragraphs (b)(3) and (b)(4) contain provisions parallel to that found 11 CFR 110.1(b) and (c) and 110.2(e). These paragraphs of the final rules contain minor wording revisions but are nearly identical to the

proposed versions, on which the Commission received no comments.

11 CFR 110.9 Violations of Limitations

The final rules at 11 CFR 110.9, formerly entitled, ''Miscellaneous provisions,'' are being amended to address only violations of the contribution and expenditure limitations. Other provisions in 11 CFR 110.9 addressing fraudulent misrepresentations, the price index increase, and the voting age population are being or will be amended and moved in this rulemaking and other BCRA rulemaking projects.[2] The title of section 110.9 is also being changed to ''Violations of limitations'' to reflect these changes. Finally, the final rules add the word ''knowingly'' in two places pertaining to the acceptance of contributions in violation of the limitations and prohibitions set forth in 11 CFR part 110. This revision mirrors the knowledge requirement in 2 U.S.C. 441a(f) and 441f. No comments were received on this revision or the reorganization of these provisions.

The prohibition on contributions by minors is contained in 2 U.S.C. 441k and not in 2 U.S.C. 441a of the Act. Therefore, the Commission notes that in instances where a candidate, an authorized committee, or a committee of a political party knowingly accepts a contribution from a minor, it would be in violation of § 110.9 only if the contribution is made in the name of another, but not if the contribution was made with the minor's own funds. *See* 2 U.S.C. 441a(f)(''no candidate or political committee shall knowingly accept any contribution * * * in violation of the provisions of this section'').

11 CFR 110.17 Price Index Increase

Pre-BCRA 2 U.S.C. 441a(c) mandated yearly indexing to inflation of the expenditure limitations established by 2 U.S.C. 441a(b) (the limits on expenditures by candidates for nomination and election to the office of President of the United States who accept public funding) and 2 U.S.C. 441a(d) (the limits on expenditures by national party committees, State party committees, or their subordinate committees in connection with the general election campaign of candidates for Federal office). BCRA amends 2 U.S.C. 441a(c) to extend the inflation indexing to: (1) The limitations on contributions made by persons under 2 U.S.C. 441a(a)(1)(A) (contributions to candidates) and 441a(a)(1)(B) (contributions to national party committees); (2) the bi-annual aggregate contribution limits applicable to individuals now found at 2 U.S.C. 441a(a)(3); and (3) the limitation on contributions made to U.S. Senate candidates by certain political party committees at 2 U.S.C. 441a(h). 2 U.S.C. 441a(c)(1)(B). Under the statute, the adjustments for inflation for 2 U.S.C. 441a(a)(1)(A), 441a(a)(1)(B), 441a(a)(3) and 441a(h) are to be made only in odd-numbered years and such increases are to be in effect for the 2-year period beginning on the first day following the date of the general election in the preceding year and ending on the date of the next regularly scheduled general election. 2 U.S.C. 441a(c)(1)(C).

Former 11 CFR 110.9(c), which described the expenditure limits subject to inflation indexing, did not include any of the new inflation indexing discussed above. In order to address the price indexing for the new contributions and expenditures limitations in a comprehensive manner, the Commission is adding new § 110.17 to track the changes to 2 U.S.C. 441a(c).

1. 11 CFR 110.17(a) Price Index Increases for Party Committee Expenditure and Presidential Candidate Expenditure Limitations

New § 110.17(a) replaces and restates, with some minor rewording, former section 110.9(c) regarding the price index increases that apply to the political party committee and Presidential candidate spending limits established by 11 CFR 110.7 and 110.8. However, paragraph (a) contains one important change from former section 11 CFR 110.9(c). Section 110.9(c) had incorrectly stated that the expenditure limitations established by §§ 110.7 and 110.8 would be increased by the annual percent difference of the price index, as certified to the Commission by the Secretary of Labor. Section 441a(c) of the Act does not use an annual percent difference of the price index to calculate the increases. Instead, it requires the use of the percent difference between the price index for the 12 months preceding the beginning of the calendar year in which the change is made and the base period. For the party committee expenditures limitations and the Presidential candidate expenditures limitations, the base period is calendar year 1974, with each change remaining in effect for a calendar year. Consequently, paragraph (a) of new 11 CFR 110.17 correctly states the standard to be applied and deletes the term ''annual'' from the regulation. The Commission received no comment on this change.

2. 11 CFR 110.17(b) Price Index Increases for Contributions by Persons, by Political Party Committees to Senatorial Candidates, and the Bi-Annual Aggregate Contribution Limitation for Individuals

As noted above, BCRA increased the number of contribution limitations now subject to price index increases. 2 U.S.C. 441a(c)(1)(B). New 11 CFR 110.17(b) tracks BCRA by providing that the following contribution limits will be indexed to inflation: 11 CFR 110.1(b)(1) (limits for persons contributing to candidates and authorized political committees); 11 CFR 110.1(c)(1) (limits for contributions made to national party committees); 11 CFR 110.2(e) (limits for contributions made by party committees to Senatorial candidates); and 11 CFR 110.5 (bi-annual aggregate contribution limits for individuals). New § 110.17(b)(1) specifies that these contribution limitations will be increased during odd-numbered years and that the increased limit would be in effect for a two-year period.

The NPRM raised the issue of the interaction between the statutory provision that indexes certain contribution limits, 2 U.S.C. 441a(c)(1)(C), and the various contribution limits themselves. Particular focus was centered on the retroactive effective date in the indexing provision as it relates to the two calendar year-based aggregate contribution limit of 2 U.S.C. 441a(a)(3).

In the NPRM, the Commission proposed at 11 CFR 110.5(b)(3) to interpret the statute in a way that required donors to aggregate contributions using the two-year period referenced in the effective date language of the indexing provision, rather than the 'January 1 of odd year through December 31 of even year' time frame of Section 441a(a)(3).

Several commenters, including the Congressional sponsors of BCRA, urged that the Commission not adopt the proposed approach and instead apply the calendar year approach set forth in the statutory provision setting out the contribution limit itself. The commenters noted that the inflation adjustment language was confusing and its effective date language stems largely from an intention to assure that the revised 'per election' limit on giving to candidates was revised after each general election. They urged, in essence, that the Commission simplify

[2] The BCRA rulemaking project entitled ''Other Provisions'' will address the fraudulent misrepresentation provisions. *See* Notice of Proposed Rulemaking (''NPRM'') at 67 FR 55,348, 55,356 (Aug. 29, 2002). The BCRA rulemaking project entitled ''Coordination and Independent Expenditures'' will address the voting age population provisions. *See* NPRM at 67 FR 60,042, 60,060 (Sept. 24, 2002).

application of the inflation adjustment provision so that for affected limits based on calendar year aggregations, the effective date would only affect the next upcoming calendar year-based period. This would mean that the inflation adjustments on the limit on contributing to national parties (2 U.S.C. 441a(a)(1)(B)), the limit on national party contributions to Senate candidates (2 U.S.C. 441a(h)), and the two-year limit on aggregate contributions (2 U.S.C. 441a(a)(3)) would only affect the next calendar-year based period, not the calendar year-based period when the effective date period technically begins under section 441a(c)(1)(B).

The Commission has decided to adopt the approach suggested by the commenters. It would be somewhat confusing if the calendar year-based contribution limits were to be increased in the midst of the calendar year period involved. Accordingly, the Commission is adopting final rules that delete the language at proposed 11 CFR 110.5(b)(3), and is modifying the language at proposed 11 CFR 110.1(c)(1)(ii), 110.2(e)(2), and 110.5(b)(2) and 110.17(b)(1) to clarify that for the calendar year-based limits, the indexing changes will only affect the calendar year-based periods that follow. Please note that the indexing changes for the 'per election' limit at 11 CFR 110.1(b)(1) will still take effect, pursuant to 11 CFR 110.1(b)(1)(ii), on the day after the general election and will only affect elections held after that general election. *See* discussion above regarding 11 CFR 110.1(b)(3) and Net Debts Outstanding.

New paragraph (b)(2) of 11 CFR 110.17 establishes that 2001 is the base year for the calculation of the price index difference. No comments were received regarding this paragraph. One commenter noted that while the contribution limits may be increased due to indexing to inflation, the exact amount of the increase may not be precisely known or formally published until after January of the odd-numbered year. The commenter urged that the Commission establish a ''safe harbor'' to deal with these circumstances. This commenter suggested allowing political committees to receive contributions in excess of previous contributions limits while granting a period of time after the publication of the new limits to refund ''*de minimis* excessive contributions'' without triggering enforcement consequences.

The Commission believes that the creation and implementation of this approach would be problematic. Determining or defining what amounts should be treated as *de minimis* poses difficulties. In the discussion regarding net debts outstanding and increased contribution limits, the Commission noted the confusion that would exist if multiple contribution limits attached to the same election. Similarly, allowing political committees to determine what amounts to accept in anticipating the indexing adjustments would also create confusion and, in effect, multiple contribution limits. The operation of a safe harbor would, therefore, be administratively challenging and could also undermine the contribution limits. Also, during times when inflation is low, it is possible that there would be no increase in certain limits due to the operation of the rounding provisions. *See* the Explanation and Justification for new 11 CFR 110.17(c) below. For these reasons, the Commission has determined that the acceptance of ''*de minimis*'' excessive contributions is not appropriate and is not included in the final rules.

3. 11 CFR 110.17(c) Rounding of Price Index Increases

A further change in 2 U.S.C. 441a(c) is the introduction of a rounding provision for all the amounts that are increased by the indexing to inflation in 2 U.S.C. 441a (including the Presidential expenditure limits at 2 U.S.C. 441a(b) and coordinated party spending limits at 2 U.S.C. 441a(d)). If the inflation—adjusted amount is not a multiple of $100, it is rounded to the nearest multiple of $100. 2 U.S.C. 441a(c)(1)(B)(iii). New section 110.17(c) implements the new rounding provision found at 2 U.S.C. 441a(c)(B)(iii). This final rule, which is identical to the proposed rule, did not draw any comments.

4. 11 CFR 110.17(d) Definition of Price Index

New § 110.17(d) tracks 2 U.S.C. 441a(c)(2)(A) by specifically defining the ''price index'' as the average over a calendar year of the Consumer Price Index (all items—United States city average) published by the Bureau of Labor Statistics. The Department of Labor computes the CPI using two population groups: All Urban Consumers (CPI–U) and Clerical Workers (CPI–W). The CPI–U represents approximately 87% of the total United States population while the CPI–W, a subset of the CPI–U, represents 32% of the total United States population.[3] While neither the FECA nor BCRA specifies which population group is to be used, the Commission has historically used the more inclusive CPI–U since that appears to be the best method to calculate changes in the affected limitations. The Commission received one comment supporting the use of the CPI–U and no comments supporting the use of the CPI–W. Therefore, for the reasons identified above, the Commission will continue to use the CPI–U when calculating the percent change in the Consumer Price Index.

5. 11 CFR 110.17(e) Publication of Price Index Increases

New § 110.17(e) in the final rules states that the Commission will announce the amount of the adjusted expenditure and contribution limitations in the **Federal Register** and on the Commission's Web site. The Commission received one comment supporting this provision and none opposing it.

6. Application of the First Increase Due to Percent Changes in the Price Index

The increased contribution limits of 2 U.S.C. 441a(a)(1)(A) and (B), 441a(a)(3), and 441a(h) apply to contributions made on or after January 1, 2003. However, under the interpretation outlined above, 2 U.S.C. 441a(c)(1)(C) requires that these same contribution limits be increased through indexing for inflation in odd-numbered years with the increase in effect starting with the day following the last general election in the previous year. This could imply that the initial contribution limits authorized by BCRA to take legal effect on January 1, 2003 should also be increased by the difference in the price index. Several comments, including one from the Congressional sponsors of BCRA, disagreed with this interpretation and instead urged that the first increase in the limits should occur in 2005 and take effect in November 3, 2004, which is the day after the general election.

One comment noted that it was legally impossible for the indexing provision to be given their full effect in 2003. According to the commenter, the new contribution limits are effective on or after January 1, 2003. For the indexing provisions to be given a full effect in 2003, any increase in the contribution limit would be retroactively applied, making the effective date November 6, 2002, rather than the statutorily mandated effective date of January 2, 2003. Even though the legislative history is otherwise silent on this point, this legal impossibility strongly implies that these provisions were intended to be applied first in 2005. After considering these

[3] The CPI published by the Department of Labor may be found at *http://www.bls.gov/cpi/home.htm.*

comments, the Commission agrees that the indexing provisions should be first applied in 2005.

11 CFR 110.19 Contributions and Donations by Minors

1. Introduction

BCRA prohibits individuals who are 17 years old and younger (minors) from making contributions to Federal candidates and contributions and donations to committees of political parties. *See* 2 U.S.C. 441k. Senator McCain, a primary sponsor of BCRA, stated during the Senate debate on the legislation that the prohibition on contributions by minors ''restores the integrity of the individual contribution limits by preventing parents from funneling contributions through their children, many of whom are simply too young to make such contributions knowingly.'' 148 Cong. Rec. S2145–2146 (daily ed. March 20, 2002).

The final rules at new 11 CFR 110.19 implement BCRA's prohibitions on contributions and donations by minors at 2 U.S.C. 441k. Because 2 U.S.C. 441k expressly prohibits only contributions by minors to candidates and contributions and donations by minors to committees of political parties, contributions by minors to other types of political committees, such as separate segregated funds and non-connected political committees, will continue to be governed by the provisions of the pre-BCRA regulations. These regulations are being moved from former 11 CFR 110.1(i)(2) to 11 CFR 110.19(d).

2. 11 CFR 110.19(a) Contributions to Candidates

Paragraph (a) of 11 CFR 110.19 prohibits contributions by minors to Federal candidates. The paragraph specifies that the prohibition on contributions by minors to Federal candidates includes contributions to a candidate's principal campaign committee, to any other authorized committee of that candidate, and to any entity directly or indirectly established, financed, maintained or controlled by one or more Federal candidates.

The Commission sought comment on whether prohibiting contributions by minors to entities directly or indirectly established, financed, maintained or controlled by one or more Federal candidates is within the scope of 2 U.S.C. 441k. The only commenter to address this issue supported prohibiting minors' contributions to such entities, opining that the prohibition would further BCRA's purpose of ensuring that contribution limits are not evaded by a parent funneling money through a child. The Commission agrees.

The Commission also sought comment in the NPRM as to whether the regulations should make clear that the relevant time for determining whether a minor has made a prohibited contribution or donation is the age of the minor at the time he or she makes a contribution. No comments were received on this issue. The final rules do not include a separate provision addressing this point because reference in the rules to 11 CFR 110.1(b)(6), which addresses when a contribution is made, provides sufficient clarification.

3. 11 CFR 110.19(b) Contributions and Donations to Committees of Political Parties

New 11 CFR 110.19(b) implements BCRA's prohibition on contributions and donations by minors to ''a committee of a political party.'' The proposed rules at 11 CFR 110.19(b) interpreted this provision as a prohibition on contributions and donations to national, State, district, and local party committees. In light of BCRA's language prohibiting donations as well as contributions to political party committees, the Commission proposed to interpret 2 U.S.C. 441k to prohibit minors from making any donations whatsoever to State, district, and local party committees, including to their non-Federal accounts. In the alternative, the Commission sought comment on whether a narrower construction of BCRA's prohibition on donations to State, district, and local party committees was warranted. Specifically, the Commission sought comment on prohibiting donations by minors to the extent such amounts are used to conduct activities affecting Federal elections but to permit these donations if used for exclusively non-Federal purposes to the extent permitted by State law.

Two commenters addressed this issue. One commenter stated that BCRA's prohibition should not extend to minors' contributions to State, district, and local party committees because the purpose of the provision is to prevent parents from evading federal contribution limits by funneling contributions to their children. The commenter argued that aside from limits on Levin funds, which can be used to finance certain ''Federal election activities'' by State, district, and local parties, BCRA does not limit funds given to State, district, and local parties. The same commenter also rejected the narrower construction described in the NPRM that would prohibit minors' donations to State, district, and local party committees only to the extent that they were to finance activities affecting Federal elections. The commenter argued that concerns that minors' contributions might be used as Levin funds should be addressed in a rulemaking addressing those funds.

A second commenter stated that though contributions by minors to State, district, and local party committees do not risk circumvention of federal contribution limits ''since there are no such limits,'' the statutory language at 2 U.S.C. 441k does not limit the prohibition on contributions or donations by minors to federal accounts of State, district, and local party committees. Other commenters, including the Congressional sponsors of BCRA, did not directly address the issue of minors' donations to political party committees but noted that minors may continue to make donations directly to State and local candidates to the extent permitted under State law.

The final rule at 11 CFR 110.19(b)(1) follows the proposed rule by prohibiting contributions and donations by minors to national, State, district, and local committees of a political party. Further, the Commission believes that interpreting the prohibition on donations to encompass both non-Federal accounts and Federal accounts of political party committees is appropriate. Interpreting the phrase ''committee of a political party'' to encompass only national party committees would render the prohibition on ''donations'' meaningless because national party committees must no longer accept non-Federal funds under 2 U.S.C. 441i. Similarly, the prohibition on ''donations'' would have no meaning if the minor's prohibition encompassed only Federal accounts of party committees since funds accepted by Federal accounts, used for the purpose of influencing Federal elections, are considered to be ''contributions'' not ''donations.'' Thus, BCRA preempts State law to the extent that State law permits minors to make donations to State, district, and local party committees.

Prohibiting donations by minors to all committees of State, district, and local parties also has a Federal purpose because donations of non-Federal funds to State parties could otherwise be used, in part, to finance Federal election activities, as defined at 2 U.S.C. 431(20). *See also,* 11 CFR 100.24(a) and (b) in Final Rules for Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49,064, 49,110–49,111 (July 29, 2002). These activities, including voter registration and get-out-the vote activities conducted within a

specific time frame, are required under BCRA to be funded either wholly with Federal funds or with a combination of Federal funds and another category of funds regulated by BCRA known as ''Levin funds.'' *See* 67 FR at 49,098 and 49,125–49,126 (11 CFR 300.32(c) and 300.33(a) and accompanying Explanation and Justification). Although Levin funds may be raised from sources permitted under State law, BCRA limits the amount of such funds to $10,000 per donor. Thus, to the extent that donations to State, district, and local party committees may be used for such activities, BCRA limits those donations. Prohibiting minors from making donations serves to prevent parents from circumventing those donation limits through minor children, just as the prohibition on contributions by minors serves to prevent evasion of the contribution limits.

The Commission has decided not to include in the final rules the alternative suggested in the NPRM that would permit minors to make donations to non-Federal accounts of State, district, and local party committees if the recipient committee can show by establishing separate accounts or through a reasonable accounting method that the donation is used for exclusively non-Federal purposes. As discussed above, the statutory language is broad and does not distinguish between Federal and non-Federal accounts of party committees. Additionally, this approach would require State, district, and local party committees to track yet another type of donation or establish another account in addition to those it already tracks or maintains, thereby resulting in an additional administrative burden to those groups. *See, e.g.*, 67 FR at 49,093 (Explanation and Justification for 11 CFR 300.30).

Accordingly, as interpreted by the final rules, BCRA preempts State law to the extent that State law permits individuals under 18 years of age to donate funds to State, district, and local party committees. This preemption may have little practical effect in some states. As pointed out in the NPRM, many states treat contributions by minors as contributions by their parent(s) or guardian(s). *See* for example, Kan. Stat. Ann. 25–4153(c) and Okla. Stat. t. 74, 257:10–1–2(a)(1) and (h)(2).

Paragraph (b)(2) of the final rules is unchanged from the proposed rules. It prohibits contributions and donations by minors to entities directly or indirectly established, financed, maintained or controlled by a committee of a national, State, district or local political party. No comments were received on this provision.

As discussed above in the Explanation and Justification for paragraph (b)(1), the Commission interprets the prohibition on contributions and donations by minors to committees of political parties to include accounts of party committees and entities established, financed, maintained or controlled by these party committees, including their Federal and non-Federal accounts. Consequently, new paragraph (b)(3) of the final rules makes clear that the prohibition on contributions and donations by minors encompasses donations to any account of a committee or entity described in paragraphs (b)(1) and (b)(2) of this section.

4. Contributions and Donations by Minors for Certain Runoffs, Recounts and Election Contests

BCRA provides that its prohibition on contributions and donations by minors to candidates and political parties does not apply with respect to runoff elections, recounts or election contests resulting from elections held prior to November 6, 2002. *See* 2 U.S.C. 431 note. Proposed 11 CFR 110.1(i)(3) addressed this provision. No commentes were received on it. The final rules do not address 2 U.S.C. 431 note because the Commission has concluded that regulatory provisions for it are unnecessary.

5. 11 CFR 110.19(c) Contributions to Political Committees That Are Not Authorized Committees or Committees of Political Parties

Because 2 U.S.C. 441k specifically prohibits contributions by minors to candidates and political party committees and not to other types of unauthorized committees, proposed 11 CFR 110.19(c) contemplated that minors could continue to make unearmarked contributions to unauthorized political committees except political party committees, in accordance with the requirements of 11 CFR 110.1(i)(2), the prior rules governing contributions by minors. The Commission sought comment in the NPRM as to whether 2 U.S.C. 441k could be interpreted to also prohibit contributions by minors to other political committees such as separate segregated funds and non-connected political committees. None of the commenters addressed this issue.

The final rules adhere to the plain language of 2 U.S.C. 441k in permitting minors to continue to make contributions to these other political committees under the existing rules. Thus, the final rules at 11 CFR 110.19(c)(1) through (c)(3) restate the regulations governing contributions by minors, which are being moved from 11 CFR 110.1(i)(2) and amended to reflect that they now govern unearmarked contributions by minors to unauthorized political committees other than political party committees. Paragraph (c) provides that an individual under 18 years of age may make contributions in accordance with the contribution limits set out at 11 CFR 110.1 and 110.5, if all of the following conditions are satisfied: (1) The minor voluntarily and knowingly makes the decision to contribute; (2) the funds, goods or services contributed are owned or controlled exclusively by the minor; (3) the contribution is not made from the proceeds of a gift given to the minor to make a contribution or is not in any way controlled by an individual other than the minor; and (4) the contribution is not earmarked or otherwise directed to one or more Federal candidates or political committees or organizations described in §§ 110.19(a) and (b).

The reorganization of the final rule clarifies that the types of committees to which a minor may continue to contribute are political committees not described in §§ 110.19(a) and (b), provided that the contribution is not earmarked to a candidate, committee or organization described in §§ 110.19(a) and (b). The final rules also clarify that non-earmarked contributions to these other political committees will continue to be governed by the existing regulations governing contributions by minors. No comments were received on this provision.

6. 11 CFR 110.19(d) Volunteer Services

Paragraph (d) of the final rules makes clear that minors are not prohibited from volunteering their services to Federal candidates, political party committees or other political committees, in accordance with legislative intent. *See* 148 Cong. Rec. S2146 (daily ed. March 20, 2002) (statement of Senator McCain). The final rule is identical to proposed 11 CFR 110.19(d). The Commission received one comment addressing volunteer services. The commenter agreed that under 2 U.S.C. 441k minors could continue to participate in any type of political campaign by volunteering.

7. 11 CFR 110.19(e) Definition of Directly or Indirectly Establish, Maintain, Finance, or Control

The final rule at 11 CFR 110.19(e) is similar to the language of the proposed rule in 11 CFR 110.19(e). It refers the reader to 11 CFR 300.2(c) for the definition of ''directly or indirectly establish, maintain, finance, or control.'' For the definition, *see* Final Rules for

Excessive and Prohibited Contributions: Non-Federal Funds or Soft Money, 67 FR at 49,121. The Commission believes that it is preferable to use the same definition of a term throughout the BCRA regulations to promote consistency and avoid confusion where, as here, doing so would not undermine the purpose of the statute. One commenter expressed support for using the same definition of the term throughout the BCRA regulations, although the same commenter noted that it had disagreed with the definition of ''directly or indirectly establish, maintain, finance, or control'' contained in 11 CFR 300.2(c) in its comments on the NPRM on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money.

8. Proposed Exemption for Emancipated Minors

The Commission also sought comment in the NPRM as to whether minors who are emancipated under State law should be exempt from the prohibition. Under many State laws, a petition for a judicial declaration or order of emancipation requires consideration as to whether a minor manages his or her own financial affairs or is financially self-supporting. Emancipation also has the effect, in most cases, of conferring upon a minor the rights and responsibilities of an adult, and relieving a child of parental control, thereby diminishing the possibility that a parent would funnel contributions or donations through an emancipated minor child.

Five commenters addressed this issue. Four commenters, including the congressional sponsors of BCRA, expressed support for such an exemption. These commenters agreed that the risk of parental evasion of the contribution limits through an emancipated minor was either not present or diminished. The fifth commenter agreed that the risk of parental circumvention of contribution limits was less of a concern in the case of an emancipated minor. However, this commenter argued that the statutory language clearly prohibited contributions by minors based solely on age.

The Commission has decided not to include an exemption for emancipated minors in the final rules given the plain language of 2 U.S.C. 441k, which prohibits certain contributions and donations by minors on the basis of age alone and not on a minor's legal or financial independence from a parent.

11 CFR 110.20 Prohibition on Contributions, Donations, Expenditures, Independent Expenditures and Disbursements by Foreign Nationals

As indicated by the title of section 303 of BCRA, ''Strengthening Foreign Money Ban,'' Congress amended 2 U.S.C. 441e to further delineate and expand the ban on contributions, donations, and other things of value by foreign nationals. BCRA expressly applies the ban to contributions and donations solicited, accepted, received, or made directly or indirectly in connection with State and local, as well as Federal office. 2 U.S.C. 441e(a)(1)(A) and (a)(2). Furthermore, the prohibition applies to: (1) Contributions and donations to committees of political parties; (2) donations to Presidential inaugural committees; (3) donations to party committee building funds; (4) disbursements for electioneering communications; (5) expenditures; and (6) independent expenditures. 2 U.S.C. 441e(a)(1)(B) and (C); 36 U.S.C. 510. Consequently, the Commission is amending 11 CFR part 110 to implement the revised statutory provision. The final rules remove and reserve 11 CFR 110.4(a), the former regulation that addressed foreign nationals. New § 110.20 implements BCRA's prohibition on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals. This new section also implements the provision in 2 U.S.C. 441e(a)(2) that prohibits persons from knowingly soliciting, accepting, or receiving contributions and donations from foreign nationals, and adds prohibitions against the knowing provision of substantial assistance with foreign national contributions or donations, including, but not limited to, serving as a conduit or intermediary. ''Foreign national'' and ''knowingly'' are defined for purposes of this section.

1. 11 CFR 110.20(a)(1) and (2) Definitions of ''Disbursement'' and ''Donation''

New § 110.20(a) defines for purposes of this section several words or phrases that are either not defined in other sections of the Act or that are defined elsewhere so as to cover only Federal elections. Two of these, namely ''disbursement'' and ''donation'' were not defined in the proposed rules; however, comments were sought as to whether the final rules should include definitions of these terms.

Although the Commission did not receive any comments regarding a definition of ''disbursement,'' it believes additional guidance to be necessary in light of the use of ''disbursement'' in BCRA in the context of the foreign national prohibition, and its corresponding and repeated use in new § 110.20. Thus, the final rule at 11 CFR 110.20(a)(1) incorporate the definition of this term in new 11 CFR 300.2(d). One commenter urged the Commission to import the definition of ''donation'' in 11 CFR 300.2(e) into § 110.20(a). For the same reason that the Commission considers it necessary to provide guidance as to ''disbursement'' in § 110.20, it agrees that § 110.20(a) should also include a definition of ''donation.'' Consequently, paragraph (a)(2) incorporates the definition of ''donation'' at 11 CFR 300.2(e) into § 110.20.

2. 11 CFR 110.20(a)(3) Definition of ''Foreign National''

Section 110.20(a)(3), which defines ''foreign national,'' generally follows the definition at former 11 CFR 110.4(a)(4). Section 110.20(a)(3)(i) incorporates ''foreign principal'' as defined in 22 U.S.C. 611(b) within the definition of ''foreign national.'' Paragraph (a)(3)(ii) includes non-citizens but excludes permanent residents of the United States as defined in 8 U.S.C. 1101(a)(20). Paragraph (a)(3)(iii) narrows the definition of ''foreign national'' by excluding both citizens of the United States and, in keeping with BCRA, United States nationals pursuant to 8 U.S.C. 1101(a)(22).[4] The final rule is the same as the language in proposed 11 CFR 110.20(i). No comments addressing this definition were received.

3. 11 CFR 110.20(a)(4) and (a)(5) Definition of ''Knowingly''

Both the former and the current foreign national prohibitions in 2 U.S.C. 441e are silent as to what degree of knowledge, if any, a person soliciting, accepting, or receiving a contribution or donation must have regarding the foreign national status of the contributor or donor to establish a violation of the statute. In contrast, some other prohibitions in FECA and BCRA expressly provide that knowledge is an element of the violation.[5]

The Commission in recent years has addressed the issue of required knowledge in a number of enforcement matters arising under former 2 U.S.C.

[4] ''National of the United States'' is defined as ''(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.'' 8 U.S.C. 1101(a)(22). The addition of (B) covers residents of American Samoa.

[5] 5 *E.g.*, 2 U.S.C. 441a(f) ''No candidate or political committee shall *knowingly* accept any contribution * * * in violation of the provisions of this section * * *.'' (Emphasis added).

441e(a). *See*, for example, Matter Under Review (''MUR'') 4530, *et al.* In this and related matters, the Commission confronted questions of whether the statute or the First Amendment requires a person to have knowledge of a contributor or donor's foreign national status in order to be in violation of the foreign-national prohibition, and, if so, what degree of knowledge is required.

The Commission considered, for example, whether actual knowledge at the time of a solicitation or receipt is a prerequisite for a violation, or whether the person has a duty of inquiry when circumstances would raise the suspicions of an objective observer. Another alternative with regard to the level of knowledge required would be to assume, given the silence in both FECA and BCRA on this question, that Congress intended this to be a strict liability statute. The fact that Congress has used ''knowingly'' in other provisions of FECA and BCRA, but did not include this standard with regard to the solicitation, acceptance, or receipt of foreign national contributions and donations, could be construed as intent not to require knowledge in this regard.

The U.S. Supreme Court has found that '' 'the meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, * * * the sole function of the courts is to enforce it according to its terms'.'' Sutherland Statutory Construction 40:01, *quoting Caminetti* v. *U.S.*, 242 U.S. 470, 485 (1917). However, one exception to this ''plain meaning rule'' is that the rule should not be applied when an injustice would result. Sutherland Statutory Construction 47:25. Based upon its prior enforcement experience with political committees, and, in particular, with the frequent involvement of volunteers in the solicitation and receipt of contributions and donations, the Commission has determined that a knowledge requirement may produce a less harsh result than a strict liability standard.

The final rules at 11 CFR 110.20(a)(4), like the proposed rules, contain three standards of knowledge, any one of which would satisfy the knowledge requirements: (1) Actual knowledge; (2) reason to know; and (3) the equivalent of willful blindness. Additionally, both the proposed rules and the final rules in paragraph (a) contain a list of facts that would lead a reasonable person to conclude that, or inquire as to whether, a contribution or donation was made by a foreign national.

The NPRM sought comments as to whether the additions of a knowledge requirement and of specific standards of knowledge were appropriate and whether there were other potential facts that should be added to those proposed as circumstances that should trigger an inquiry. Further, comments were requested as to whether the regulation should expressly require that recipient candidates, political committees and other organizations actively seek information as to the citizenship of contributors and donors whenever one of the factors listed is at issue.

Several of the commenters opposed a strict liability standard, but supported the inclusion of explicit knowledge requirements in the rules. However, some commenters opposed as too high the standard in proposed paragraph (g)(4)(ii) that would find knowledge when a person was aware of facts that would lead a reasonable person to conclude that there is ''a substantial probability'' the source of certain funds is a foreign national; one of these commenters suggested that a ''preponderance of the evidence'' or ''more likely than not''standard would be more appropriate. Divergent views were expressed as to the inclusion of a duty to inquire about the nationality of a donor, with one commenter urging reliance upon current 11 CFR 103.3 rather than upon the addition of an affirmative duty to inquire,[6] and another arguing that a ''reasonable inquiry'' should include asking ''directly'' whether or not a donor is a foreign national.

As is also discussed below with regard to new section 110.20(g) and (h), the final rules make knowledge an element of any violation of 2 U.S.C. 441e arising from the solicitation, acceptance, or receipt of foreign national contributions and donations, or that results from the substantial provision of assistance in the solicitation, making, acceptance, or receipt of such contributions and donations. The final rules at 11 CFR 110.20(a)(4) provide a definition of ''knowingly,'' whereby satisfaction of any one of three standards will establish knowledge for purposes of 11 CFR 110.20(g) and (h). Section 110.20(a)(5) contains a list of facts that would lead a reasonable person to conclude, or inquire as to whether, a contribution or donation was made by a foreign national, as discussed below.

In the final rules, the first standard of knowledge at paragraph (a)(4)(i) is that of actual knowledge of the source of funds solicited, accepted, or received. The second standard at paragraph (a)(4)(ii) requires awareness on the part of the person soliciting, accepting, or receiving a contribution or donation of certain facts that would lead a reasonable person to conclude that there is a substantial probability that the contribution or donation comes from a foreign source. Substantial probability means that there is a considerable likelihood that the donor is a foreign national. *See* Black's Law Dictionary, Fifth Edition, 1979, and the Random House Dictionary of the English Language, 1987. This is, in effect, a ''reason to know'' standard under which a person should have acted as though a fact existed until it could be proven otherwise. *See* Restatement (Second) of Agency, sec. 9, cmt. d (1958).

The third standard of knowledge at paragraph (a)(4)(iii) is satisfied when the person soliciting, accepting, or receiving a contribution or donation is, or becomes aware of, facts that would lead a reasonable person to inquire as to whether the source of the funds solicited, accepted, or received is a foreign national. This third standard is in effect willful blindness, which is applicable to situations in which a known fact should have prompted a reasonable inquiry, but did not.

Each of the three paragraphs focus on the source of the funds at issue. The source of funds may or may not be the putative contributor or donor who provides a check or other negotiable instrument to a candidate or committee; rather, the source would be the person or persons who originated the contribution or donation, even if it passed through the hands or accounts of a U.S. citizen or permanent resident.

Paragraph (a)(5) sets forth categories of facts that are intended to be illustrative of the types of information that should lead a recipient to question the origin of a contribution or donation under paragraphs (a)(4)(ii) or (iii). These consist of: (i) The use of a foreign passport or passport number; (ii) the provision of a foreign address; (iii) the use of a check or other written instrument drawn on a foreign bank or a wire transfer from a foreign bank; or (iv) contributors or donors who reside abroad. Failure to conduct a reasonable inquiry in the face of any of these facts constitutes evidence of a knowing violation of the Act.

[6] The Commission's regulations at 11 CFR 103.3(b) require that political committee treasurers examine all contributions received for evidence of illegality. If a contribution presenting genuine questions as to legality is deposited, the treasurer has an affirmative duty to investigate the contribution and use best efforts to determine the legality of the contribution. 11 CFR 103.3(b)(1). If, despite such due diligence, the treasurer is unable to determine the legality of the contribution within 30 days of receipt, the treasurer is required to refund the contribution to the contributor. *Id.*

4. 11 CFR 110.20(a)(6) Definition of ''Solicit''

The NPRM sought comments as to whether the Commission should incorporate into the regulations at 11 CFR 110.20 the definition of ''solicit'' at 11 CFR 300.2(m), whether it should leave the term undefined, or whether it should give the term a more expansive or a narrower reading in this context. The term ''to solicit'' is defined in 11 CFR 300.2(m) as ''to ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary.'' Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule, 67 FR 49,064–49,122 (July 29, 2002).

Two of the comments received strongly urged the Commission not to incorporate the definition of ''solicit'' at 11 CFR 300.2(m), deeming it too narrow. One such commenter characterized the definition as ''radically underinclusive'' and inferred that it would allow ''a broad range of solicitations to escape [regulation,]'' and, if adopted in part 110, would allow candidates and officials to ''suggest or request that foreign nationals make contributions to their campaigns.'' In promulgating 11 CFR 300.2(m), however, the Commission was advised of the need for clear definitions to avoid ambiguity, vagueness and confusion as to what activities or conversations would constitute solicitations. 67 FR at 49,086–49,087 (July 29, 2002). By using the term ''ask,'' the Commission defined ''solicit'' to require some affirmative verbalization or writing, thereby providing members of Congress, candidates and committees with an understandable standard. It is the impressionistic or subjective aspects of the term ''suggest'' and ''request'' that the Commission rejected in the Title I rulemaking. The Commission also notes that while the terms ''suggest'' or ''request'' recommended by one commenter encompass a wide array of activity, it is not clear that they would cover more direct verbalizations or writings captured by terms such as ''demand,'' ''instruct,'' or ''tell,'' which the Commission believes are captured by the term ''ask.''

The Commission is aware that the decision to define ''solicit'' as ''ask'' rather than as ''request, suggest or recommend'' (proposed by the Commission staff) was controversial. The Commission notes that ''request'' and ''ask'' are essentially synonymous. (See American Heritage College Dictionary, 34d Edition: ''request'' is defined as ''1. To express a desire for; ask for. 2. To ''ask'' (a person) to do something;'' ''ask'' is defined as ''* * * 4. To make a request of or for.'') The Commission was unwilling to use the far more expansive term ''suggest,'' for concern that such a vague term could subject persons to investigation and prosecution based on highly subjective judgments about whether a particular remark or action constituted a ''suggestion.'' The definition of ''solicit'' is intended to include ''a palpable communication intended to, and reasonably understood to, convey a request for some action * * *'' The Democratic National Committee, the Democratic Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee, Comments on Coordinated and Independent Expenditures, 3 (Oct. 11, 2002).

In addition, the basic canons of statutory construction argue strongly against using the phrase ''request or suggestion'' to define ''solicit.'' BCRA, and FECA prior to passage of BCRA, use the term ''request or suggestion'' in the definition of ''independent expenditure'' (See BCRA section 211, 2 U.S.C. 431(17)) and in the reciprocal definition of ''coordination'' (See BCRA section 213, 2 U.S.C. 441a(a)(7)(B)). ''We find the contrasting language to be particularly telling. Where Congress includes particular language in one section of a statute but omits it in another * * * it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'' (*FEC* v. *NRA Political Victory Fund*, 513 U.S. 88, 95 (1994) quoting *Keene Corp.* v. *United States*, 508 U.S. 200, 208 (1993) (internal quotations and citation omitted).

The Commission believes that the need to craft clear and understandable definitions marking the boundary between permissible and impermissible solicitations by candidates, parties, or their agents in the realm of non-Federal funds, applies equally to the realm of foreign national funds. A single definition has the added benefit of reducing confusion among those who solicit campaign funds often, and from a variety of individuals. Accordingly, the term ''solicit'' in the final rules at 11 CFR part 110.20 has the same meaning as in 11 CFR 300.2(m).

5. 11 CFR 110.20(a)(7) Safe Harbor for Knowledge Standard

The Commission in the NPRM also sought comment on whether it should create safe harbors within which political committees would be deemed to have satisfied their duty to investigate contributions or donations in order to confirm that they do not come from foreign sources. One commenter requested that the Commission expressly create such a safe harbor if ''reasonable efforts'' have been made to follow guidelines in the regulations.

Whether a person has the requisite knowledge under 11 CFR 110.20(a)(4) and whether a contributor or donor is a foreign national are often fact-intensive determinations. Given the wide range of factual situations that could arise, and the likelihood that some foreign donors or contributors will take steps to conceal the illegal nature of their actions, it is not possible in all circumstances to craft appropriate safe harbors to safeguard recipient committees who do not and cannot know of the illegality while at the same time holding accountable those who do or should know.

However, the Commission is adopting one narrowly tailored safe harbor. Under 11 CFR 103.3(b)(1), with respect to contributions that present ''enuine questions'' that they may come from a foreign source, political committee treasurers have an affirmative duty to investigate the contributions and use best efforts to determine the legality of the contribution. If, despite such due diligence, the treasurer is unable to determine the legality of the contribution within 30 days, the treasurer is required to refund the contribution to the contributor. Id. During the last several years, many political committees and other organizations, out of an abundance of caution, have adopted a policy of requesting and keeping on file copies of U.S. passport papers from all their contributors who reside outside the United States, or who list a foreign address, or who make a contribution through a foreign bank. The Commission believes such prudent practices are appropriate and satisfy a political committee's affirmative duty to investigate such questionable contributions. Accordingly, the Commission is creating a safe harbor at 11 CFR 110.20(a)(7) whereby any person shall be deemed to have conducted a reasonable inquiry under 11 CFR 110.20(a)(4)(iii) if he or she seeks and obtains copies of current and valid U.S. passport papers for U.S. citizens who are contributors or donors who (i) use a foreign passport or passport number for identification purposes, (ii) provide a foreign address, (iii) make a contribution or donation by means of a check or other written instrument drawn on a foreign bank or by a wire transfer from a foreign bank, or (iv) reside abroad. *See* 11 CFR 110.20(a)(5)(i) through (iv). Under those circumstances, the political committee shall also be deemed to have satisfied its

affirmative duty to investigate such contributions under 11 CFR 103.3(b)(1).

Current 11 CFR 103.3(b)(2) provides the steps necessary for a treasurer who discovers that an illegal contribution has been deposited to fully remedy the situation; this provision applies ''to contributions from foreign nationals * * * when there is no evidence of illegality on the face of the contributions themselves.'' Explanation and Justification, 52 FR 760, 768–69 (Jan. 9, 1987). In light of 11 CFR 103.3(b)(2), the Commission has concluded that no additional safe harbor is necessary in this area.

6. 11 CFR 110.20(b) ''Indirectly''

BCRA amends 2 U.S.C. 441e by banning foreign national contributions and donations, or express or implied promises to make such contributions or donations, that are made ''directly or indirectly.'' Previously, 2 U.S.C. 441e(a) banned foreign national contributions made directly ''or through any other person.'' The legislative history of BCRA does not reveal whether Congress intended ''indirectly'' to have a broader meaning than ''through any other person,'' the language used in pre-BCRA 2 U.S.C. 441e(a).

The Commission solicited comments in the NPRM as to whether ''indirectly'' should be construed to have a broader meaning than ''through any other person'' and if so, whether the rules should explicitly reflect this interpretation by defining ''indirectly.'' Several of the commenters urged the Commission not to interpret ''indirectly'' as having a broader meaning, arguing that there is nothing in the legislative history to support such a reading, and that to do so would involve speculation as to Congressional intent.

The NPRM further solicited comments as to whether ''indirectly'' should be interpreted to cover U.S. subsidiaries of foreign corporations that make non-Federal donations with corporate funds or that have a separate segregated fund that makes Federal contributions. Specifically, the Commission sought comment on whether BCRA's new statutory language prohibits a foreign-controlled U.S. corporation, including a U.S. subsidiary of a foreign corporation, from making corporate donations, or from making Federal contributions from a separate segregated fund, or both.

Numerous comments were received addressing the involvement in elections of U.S. subsidiaries of foreign corporations, all of which strongly urged the Commission not to extend the prohibition on foreign national involvement to the activities of foreign-owned U.S. subsidiaries. The comment submitted by the BCRA sponsors stated that Congress in this legislation did not address ''contributions by foreign-owned U.S. corporations, including U.S. subsidiaries of foreign corporations.'' A number of the other commenters cited the absence, in BCRA and in its legislative history, of express Congressional intent to reach either donations by such corporate entities in state elections, where permitted by state law, or the involvement of their separate segregated funds in Federal elections. They stressed the significance of such silence given the series of Commission advisory opinions over more than two decades that have affirmed the participation of such subsidiaries in elections in the United States, either directly in states where state law permits, or through separate segregated funds with regard to Federal elections, so long as there is no involvement of foreign nationals in decisions regarding such participation and so long as foreign nationals are not solicited for the funds to be used. *See* Advisory Opinions 2000–17, 1999–28, 1995–15, 1992–16, 1992–07, 1990–08, 1989–29, 1982–34, 1981–36, 1980–100, and 1978–21. Several commenters asserted further that the impetus for Congress to amend 2 U.S.C. 441e in 2002 was the involvement of individual foreign nationals in the financing of the 1996 presidential election campaign, not the activities of foreign-owned U.S. subsidiaries.

A number of commenters argued that the use of ''indirectly'' in BCRA with regard to foreign national contributions and donations represented only a codification of the Commission's earlier use of this word in advisory opinions and regulations to prohibit the direct or indirect involvement of individual foreign nationals in decisions concerning either corporate donations at the State or local level or Federal contributions made by separate segregated funds. See Advisory Opinions 2000–17, 1995–15, 1992–16, 1990–08, and 1989–29, and 11 CFR 110.4(a)(3). A joint comment stressed that Congress had earlier addressed and rejected a ban on U.S. subsidiary participation, the House of Representatives in 1998 and the Senate earlier in 1992, and that this legislative history showed that the use of ''indirectly'' in BCRA addresses only foreign national involvement in corporate decision-making.[7] These comments, plus one received from two members of the U.S. Senate, argued that, because Congress was thus very familiar with the U.S. subsidiary issue, any Congressional intent to prohibit such activity in the context of BCRA would have been addressed in debate and made explicit in the legislation.

Several commenters questioned the constitutionality of prohibiting U.S. employees of foreign-owned subsidiaries from participation in U.S. elections. They argued that such a ban would discriminate against these employees on the basis of their employers' parent companies. One commenter noted that, by definition, U.S. subsidiaries are U.S. companies. Another asserted that a ban on U.S. subsidiary election-related activity would be counter to the globalization of financial activity; yet another argued that it would be counter to NAFTA and other treaties. One commenter noted possible negative effects upon U.S. trade associations if certain of their member corporations could not form separate segregated funds.

The Commission agrees with those who have argued that ''indirectly'' should not be deemed to cover U.S. subsidiaries of foreign corporations. This agreement is based upon the lack of evidence of Congressional intent to broaden the prohibition on foreign national involvement in U.S. elections to cover such entities, and upon the

[7] These legislative references are to the histories of the Congressional Campaign Spending Limit and Election Reform Act of 1992, which was vetoed by the President, and of the Bipartisan Campaign Reform Act, H.R. 2183, when it was considered by the House of Representatives in 1998. In 1992, Senator Bentsen offered an amendment to prohibit federal contributions by the separate segregated funds of U.S. subsidiaries when such a subsidiary is more than 50% owned or controlled by a foreign corporation. The amendment would have changed the definition of ''foreign national'' to include 50% owned or controlled subsidiaries, and would also have applied the foreign national prohibition to the separate segregated funds of such subsidiaries.

In response, Senator Breaux offered a substitute amendment that would have codified (1) the right of U.S. subsidiary employees to participate in elections through separate segregated funds and (2) the prohibition in the Commission's regulations against the participation of foreign nationals, ''directly or indirectly,'' in decision-making regarding contributions or expenditures made in connection with elections at all levels and in the administration of a political committee. The Senate voted to substitute the Breaux amendment. The commenters stressed the use of ''indirectly'' in the Breaux amendment and argued that its use in BCRA was for the same purpose; *i.e.*, the codification of the regulation prohibiting the participation of foreign nationals in decision-making.

In 1998, the House voted with no opposition for an amendment introduced by Representative Gillmor and Representative Tanner to assure the right of a U.S. subsidiary of a foreign owned or controlled corporation to maintain a separate segregated fund (''SSF''). An amendment proposed by Representative Kaptur to prohibit Federal contributions or expenditures by such SSFs was later modified to address only reporting by U.S. subsidiaries.

substantial policy reasons set forth in the long line of Commission advisory opinions that have permitted U.S. subsidiaries to administer separate segregated funds and to make corporate donations for State and local elections where they are allowed to do so by state law.

The Commission has determined that the activities of U.S. subsidiaries of foreign corporations are governed by new § 110.20(i), which prohibits involvement of foreign nationals in the decision-making of separate segregated funds, and of corporations that plan to make donations in connection with State and local elections where they are permitted to do so. (See further discussion below.) Thus, the final rules do not define ''indirectly'' or contain additional rules pertaining to U.S. subsidiaries of foreign corporations.

7. 11 CFR 110.20(b) Addition of ''Donation'' in the Foreign National Ban

In BCRA, Congress added the ''donation'' of funds by foreign nationals to the existing ban on contributions by foreign nationals. In 1999, 2000, and 2001 the Commission included in its legislative recommendations to Congress a proposal that 2 U.S.C. 441e be amended to clarify that the statutory prohibition on foreign national contributions extends to State and local elections. The Commission noted, *inter alia,* that this could be accomplished by changing ''contribution'' to ''donation.''

Congress chose to retain ''contribution'' and to add ''donation'' in BCRA as a prohibited activity. Congress also revised 2 U.S.C. 441e to delete references to ''elections'' and ''candidates'' for ''any political office,'' and substituted the broader phrase ''Federal, State, or local election.'' 2 U.S.C. 441e(a)(1)(A). Through this two-fold approach, Congress left no doubt as to its intention to prohibit foreign national support of candidates and their committees and political organizations and foreign national activities in connection with all Federal, State, and local elections.

The legislative history indicates that the revision to 2 U.S.C. 441e ''prohibits foreign nationals from making any contribution to a committee of a political party or any contribution in connection with Federal, State or local elections, including any electioneering communications. This clarifies that the ban on contributions [by] foreign nationals applies to soft money donations.'' Statement of Sen. Feingold, 148 Cong. Rec. S1991–1997 (daily ed. Mar. 18, 2002). The NPRM proposed a definition of ''election,'' based to some extent on the definition in 11 CFR 100.2, which drew no comments. This proposed definition is not included in the final rules. Instead, the wording of new 11 CFR 110.20 tracks the statutory language in BCRA.

As discussed above, the definition of ''donation'' in 11 CFR 300.2(e) applies to paragraph 110.20(b). Under this provision, both contributions and donations by foreign nationals are prohibited.

8. 11 CFR 110.20(c) Contributions and Donations to Committees and Organizations of Political Parties

BCRA expressly extends the prohibition on foreign national contributions and donations to those made to committees of political parties. 2 U.S.C. 441e(a)(1)(B). The particular committees covered include the national party committees; the national congressional campaign committees; and all State, district, local, and subordinate committees, including the non-Federal accounts of State, district, and local party committees.

In light of BCRA's addition of ''donation'' to the statutory language, the proposed rules further extended the foreign national prohibition to organizations of political parties, whether or not they are political committees under the Act and 11 CFR 100.5. Because many party organization activities affect Federal, State, and local elections, this extension to all party organizations reinforces the prohibition at 2 U.S.C. 441e(a)(1)(A) on foreign national contributions and donations in connection with elections at all levels. Two commenters on the proposed rules agreed with this interpretation, and no commenters objected. Because of the interaction between 2 U.S.C. 441e(a)(1)(A) and (B), the final rule at 11 CFR 110.20(c) adopts this extension to all political party organizations.

9. 11 CFR 110.20(d) Contributions and Donations to Building Funds

BCRA prohibits foreign nationals from making any contribution or donation to national party committees, including donations for the purchase or construction of an office building. *See* 2 U.S.C. 441e. In addition, new 11 CFR 300.35(a) explicitly provides that the prohibitions in BCRA against contributions and donations by foreign nationals do not permit party committees to spend funds contributed or donated by foreign nationals for the purchase or construction of State or local party committee office buildings. Final Rule and Explanation and Justification, 67 FR 49,101, 49,127 (July 29, 2002). The Explanation and Justification for 11 CFR 300.35 indicates that this prohibition on foreign national funding also extends to in-kind contributions or donations.

Consistent with new 11 CFR 300.35(a), new 11 CFR 110.20(d) explicitly states that foreign nationals are prohibited from making contributions or donations directly or indirectly to committees or organizations of a political party for the construction or purchase of any office building. This final rule is identical to the language in proposed § 110.20(f). The only two commenters who addressed this topic agreed with this addition to the regulations.

10. 11 CFR 110.20(e) and (f) Expenditures, Independent Expenditures, and Disbursements

BCRA prohibits a foreign national from making ''an expenditure, independent expenditure, or disbursement for an electioneering communication.'' 2 U.S.C. 441e(a)(1)(C). The Commission in the NPRM interpreted the prohibitions against an ''expenditure'' or an ''independent expenditure'' by a foreign national as being general in scope, and the phrase ''for an electioneering communication'' at 2 U.S.C. 441e(a)(1)(C) as modifying only ''disbursement.'' This interpretation is based upon the fact that BCRA expressly exempts from the definition of ''electioneering communication'' ''a communication which constitutes an expenditure or an independent expenditure under this Act * * *.'' 2 U.S.C. 434(f)(3)(B)(ii).[8] This exemption apparently left ''disbursement'' as the sole transaction category applicable to electioneering communications. Several commenters agreed with this interpretation. The final rule at § 110.20(e) specifically prohibits disbursements for electioneering communications by foreign nationals.

Section 431(9)(A)(1) of FECA defines ''expenditure'' as ''any purchase, payment, * * * or anything of value made for the purpose of influencing any election for Federal office,'' and 2 U.S.C. 431(17) defines ''independent expenditure'' as ''an expenditure by a person expressly advocating the election or defeat of a clearly defined candidate which is made without cooperation or

[8] BCRA defines ''electioneering communication'' as a ''broadcast, cable, or satellite communication'' that ''refers to a clearly identified candidate for Federal office,'' that is made within particular time frames, and that is targeted to the relevant electorate if it refers to a candidate other than those for the office of President or Vice-President. 2 U.S.C. 434(f)(3)(A)(i)(I). For a more extensive discussion of electioneering communications, *see* the Final Rules on ''Electioneering Communications,'' 67 FR 65190 (Oct. 23, 2002).

consultation with any candidate * * *.'' Thus, the terms ''expenditure'' and ''independent expenditure'' apply only to amounts spent with respect to Federal elections. In contrast, ''disbursement,'' a term used in both FECA and BCRA but not defined in the statutes, is defined in 11 CFR 300.2 as ''any purchase or payment made by any person that is subject to the Act.'' As discussed above, this definition of ''disbursement'' covers payments beyond those that constitute ''expenditures,'' and ''independent expenditures,'' such as those made in connection with non-Federal elections.

BCRA does not contain an express prohibition against foreign national disbursements for activities other than electioneering communications. This omission left in question the status of disbursements by foreign nationals in connection with State and local elections that are by definition not ''expenditures'' or ''independent expenditures'' because they are not made in connection with Federal elections. The Commission's treatment of a similar issue in the past has, however, provided guidance on this question.

Previously, 2 U.S.C. 441e contained no express prohibition against expenditures by foreign nationals. Nevertheless, the Commission revised 11 CFR 110.4(a) in 1989 to state that foreign nationals were prohibited from making expenditures as well as contributions. The Explanation and Justification for that amendment stated: ''The FECA generally prohibits expenditures when it prohibits contributions by a specific category [of] persons, thereby ensuring that the persons cannot accomplish indirectly what they are prohibited from doing directly.'' 54 FR 4858 (Nov. 24, 1989). The Explanation and Justification continued: ''Nothing in section 441e's legislative history suggests that Congress intended to deviate from the FECA's general pattern of treating contributions and expenditures in parallel fashion.'' *Id.*

As discussed above, BCRA added ''donations'' to the activities prohibited to foreign nationals, this being one way in which the reach of the statute is extended to State and local elections to which the term ''contributions'' does not apply. As was the case earlier with the FECA, there is nothing in BCRA that would indicate an intent on the part of Congress to treat disbursements for State or local elections any differently than it now treats expenditures for Federal elections, or any intent to not consider donations and disbursements to be parallel concepts. The addition of ''disbursements'' also serves to strengthen even more the ban on foreign money.

The proposed rule treated ''donations'' and ''disbursements'' in the same fashion as ''contributions'' and ''expenditures'' have been addressed in the past, by prohibiting at proposed paragraph (d) all disbursements for elections by foreign nationals, not just the disbursements made for electioneering communications that were explicitly prohibited at proposed 11 CFR 110.20(e). Three commenters affirmed the Commission's approach. No commenters were opposed.

Consequently, while the final rule at § 110.20(e) prohibits any disbursement for an electioneering communication by foreign nationals, the final rule at paragraph (f) prohibits all expenditures, independent expenditures, and disbursements by foreign nationals in connection with Federal, State and local elections for the reasons stated above.

11. 11 CFR 110.20(g) Solicitation, Acceptance or Receipt of Contributions and Donations From Foreign Nationals

BCRA prohibits any person from soliciting, accepting, or receiving from a foreign national a contribution or donation made in connection with a Federal, State, or local election, or made to a party committee. 2 U.S.C. 441e(a)(2). Proposed § 110.20(g)(1) sought to prohibit the knowing solicitation, acceptance or receipt of contributions or donations from foreign nationals. As noted above, the final rule at § 110.20(g) contains the same prohibition. The Commission's additions of a knowledge requirement and of knowledge standards with regard to the solicitation, acceptance or receipt of foreign national contributions and donations are discussed above in connection with 11 CFR 110.20(a)(4) and (5).

12. 11 CFR 110.20(h) Assisting Foreign National Contributions or Donations

The foreign national prohibition at 2 U.S.C. 441e as amended by BCRA also raised issues concerning the liability of persons who knowingly assist foreign nationals in making contributions or donations. The proposed rules included a prohibition on the assisting of foreign national contributions and donations. Section 441e of the Act does not explicitly address those who assist others to violate its prohibition on foreign national contributions, donations, expenditures, independent expenditures, and disbursements. Recently, however, the Commission has addressed in the enforcement context a number of situations in which there arose questions about the liability of individuals who had provided substantial assistance to a foreign national or to a recipient committee with regard to a foreign national contribution or donation. These individuals had functioned as conduits or intermediaries for the funds involved. *See* MUR 4530, *et al.* The Commission concluded in these enforcement matters that, because the wording of 2 U.S.C. 441e at the time prohibited foreign nationals from making contributions directly or through any other person, and because the statute also prohibited persons from soliciting, accepting or receiving such contributions from a foreign national, the activities of conduits and intermediaries of foreign national funds were prohibited when the funds involved had been passed on for the purpose of making contributions. It is also worth noting that, in some instances, the foreign national making a prohibited contribution can easily evade U.S. jurisdiction, while a U.S. citizen serving as a conduit or rendering substantial assistance can be more easily reached.

The Commission has now concluded that, in light of Congressional intent in BCRA to strengthen the foreign money ban, nothing in amended 2 U.S.C. 441e should be construed to alter the Commission's pre-BCRA determinations in this respect. Additionally, the Commission has broad rulemaking authority in 2 U.S.C. 437d(a)(8) to make rules that are ''necessary to carry out the provisions of the Act.'' *See also* BCRA, Public Law 107–155, sec. 402(c). It has determined that a rule that prohibits persons from knowingly providing substantial assistance to foreign nationals to circumvent the FECA is necessary to effectuate one of the key purposes of BCRA, that is, to prevent foreign national funds from influencing elections. One commenter expressed agreement with extending the prohibition to those who assist foreign national contributions and donations.

For purposes of paragraphs (h)(1) and (2), ''substantial assistance'' means active involvement in the solicitation, making, receipt or acceptance of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction. *See, e.g., IIT, An International Investment Trust* v. *Cornfield*, 619 F.2d 909, 922, 925–926, (2nd Cir. 1980), *citing, inter alia, Rolf* v. *Blyth, Eastman Dillon & Co., Inc.*, 570 F.2d 38, 47–48 (2nd Cir.), *cert. denied*, 438 U.S. 1030 (1978); and *U.S.* v. *Peoni*,

100 F.2d 401 (2nd Cir. 1938).[9] ''Substantial assistance'' does not include strictly ministerial activity undertaken pursuant to the instructions of an employer, manager or supervisor.

The final rule at paragraph (h)(1) combines proposed paragraphs (h)(3) and (4) by prohibiting any person from knowingly providing substantial assistance in the solicitation, making, receipt, or acceptance of a contribution or donation from a foreign national. This provision covers, but is not limited to, those persons who act as conduits or intermediaries for foreign national contributions or donations and who thus would also violate the statutory prohibition against receiving contributions or donations from a foreign national. The final rule at paragraph (h)(2) extends the prohibition on knowingly providing substantial assistance to assisting foreign nationals in the making of expenditures, independent expenditures and disbursements in connection with Federal or non-Federal elections.

The three standards of knowledge set forth at § 110.20(a)(4) are applicable to anyone who provides the kinds of assistance prohibited by paragraph (h).

13. 11 CFR 110.20(i) Prohibition on Participation by Foreign Nationals in Decisions Related to Election Activities

Section 110.20(i) retains the prohibition at former 11 CFR 110.4(a)(3) on participation by foreign nationals in decisions made by any person, including entities such as corporations, labor organizations or political committees, that are related to Federal and non-Federal elections. The only changes involve the addition of ''political organization'' to the listing of decision-making entities and of ''donations'' and ''disbursements'' to the list of transactions about which decisions are made; all of these additions are needed to address fully the prohibition on the funding of State and local elections. Foreign nationals are prohibited from taking part in decisions about contributions and donations to any Federal, State, or local candidates or to, or by, any political committees or political organizations, and in decisions about expenditures and disbursements made in support of, or in opposition to, such candidates, political committees or political organizations. Foreign nationals also are prohibited from involvement in the management of a political committee, including a separate segregated fund, a non-connected committee or the non-Federal accounts of these committees.

Numerous comments received regarding the proposed rules supported this provision as the appropriate way to prevent foreign nationals from engaging in election-related activities, particularly in the context of U.S. subsidiaries of foreign-owned corporations. No commenter opposed the proposed regulation.

14. Donations to Presidential Inaugural Committees

In the NPRM the Commission proposed to include a BCRA-related rule prohibiting knowing acceptance by Presidential inaugural committees of donations from foreign nationals. Proposed 11 CFR 110.20(c), 67 FR at 54,379. The Commission had stated in the NPRM entitled ''Disclaimers, Fraudulent Solicitations, Civil Penalties, and Personal Use of Campaign Funds,'' that it would address rules pertaining to inaugural committees in a future rulemaking. 67 FR 55, 348 (Aug. 29, 2002). The Commission has determined that the rules concerning inaugural committees should be addressed in a comprehensive manner. Therefore, donations by foreign nationals to Presidential inaugural committees will also be part of this future rulemaking and are not included in these final rules.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached final rules do not have a significant economic impact on a substantial number of small entities. The entities affected by these rules are political committees, minors, foreign nationals and U.S. nationals. The basis of this certification is that the national, State, and local party committees of the two major political parties are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions.

Minors and many foreign nationals are individuals, and therefore, not small entities. Furthermore, the final rules, which are based on statutory language, clarify and describe in further detail the already existing ban on contributions by foreign nationals. Additionally, to the extent that there may be foreign nationals that may fall within the definition of ''small entities,'' their numbers are not substantial, particularly the number that would make a donation, expenditure, independent expenditure, or disbursement in connection with a Federal, State, or local election.

In addition, to the extent that the rules apply to any small entities, they are not unduly burdened by the increased contribution limitations, which give such small entities more latitude in the amount they contribute. Furthermore, the new rules for redesignating contributions for a particular election and reattributing contributions to particular donors provide political committees with flexibility and additional means to ensure compliance with FECA and BCRA, thereby reducing any economic costs they may have incurred under the previous rules.

List of Subjects

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

For the reasons set out in the preamble, Subchapter A of Chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITEES (2 U.S.C. 433)

1. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

2. Section 102.9 is amended by adding paragraph (a)(4) and revising paragraph (e) to read as follows:

§ 102.9 Accounting for contributions and expenditures (2 U.S.C. 432(c)).

* * * * *

(a) * * *

(4) In addition to the account to be kept under paragraph (a)(1) of this section, for contributions in excess of $50, the treasurer of a political committee or an agent authorized by the treasurer shall maintain:

(i) A full-size photocopy of each check or written instrument; or

(ii) A digital image of each check or written instrument. The political committee or other person shall provide the computer equipment and software needed to retrieve and read the digital images, if necessary, at no cost to the Commission.

* * * * *

[9] As stated in *IIT*, Judge Learned Hand observed in *Peoni*, a criminal case involving possession of counterfeit money, that for centuries courts had required that an accessory to an activity be a person who must ''in some sort associate himself with the venture, that he participate in it as something that he wishes to bring about, that he seek by his action to make it succeed. All the words used [by courts] * * * carry an implication of purposive attitude towards it.'' 100 F.2d at 402.

(e)(1) If the candidate, or his or her authorized committee(s), receives contributions that are designated for use in connection with the general election pursuant to 11 CFR 110.1(b) prior to the date of the primary election, such candidate or such committee(s) shall use an acceptable accounting method to distinguish between contributions received for the primary election and contributions received for the general election. Acceptable accounting methods include, but are not limited to:

(i) The designation of separate accounts for each election, caucus or convention; or

(ii) The establishment of separate books and records for each election.

(2) Regardless of the method used under paragraph (e)(1) of this section, an authorized committee's records must demonstrate that, prior to the primary election, recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made.

(3) If a candidate is not a candidate in the general election, any contributions made for the general election shall be refunded to the contributors, redesignated in accordance with 11 CFR 110.1(b)(5) or 110.2(b)(5), or reattributed in accordance with 11 CFR 110.1(k)(3), as appropriate.

* * * * *

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHBITIONS

3. The authority citation for part 110 is revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441k.

4. Section 110.1 is amended by revising paragraphs (a), (b)(1), (b)(3)(iii), (b)(5)(ii), (c)(1), (i), (k)(3)(ii), (l)(4), and (l)(5) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

(a) *Scope.* This section applies to all contributions made by any person as defined in 11 CFR 100.10, except multicandidate political committees as defined in 11 CFR 100.5(e)(3) or entities and individuals prohibited from making contributions under 11 CFR 110.19 and 110.20 and 11 CFR parts 114 and 115.

(b) * * *

(1) No person shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office that, in the aggregate, exceed $2,000.

(i) The contribution limitation in the introductory text of paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17.

(ii) The increased contribution limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the contribution limitation is increased and ending on the date of the next general election. For example, an increase in the contribution limitation made in January 2005 is effective from November 3, 2004 to November 7, 2006.

(iii) In every odd numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limitation in effect and place such information on the Commission's Web site.

* * * * *

(3) * * *

(iii) The amount of the net debts outstanding shall be adjusted as additional funds are received and expenditures are made. The candidate and his or her authorized political committee(s) may accept contributions made after the date of the election if:

(A) Such contributions are designated in writing by the contributor for that election;

(B) Such contributions do not exceed the adjusted amount of net debts outstanding on the date the contribution is received; and

(C) Such contributions do not exceed the contribution limitations in effect on the date of such election.

* * * * *

(5) * * *

(ii) (A) A contribution shall be considered to be redesignated for another election if—

(*1*) The treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation; and

(*2*) Within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

(B) Notwithstanding paragraph (b)(5)(ii)(A) of this section or any other provision of this section, the treasurer of the recipient authorized political committee may treat all or part of the amount of the contribution that exceeds the contribution limits in paragraph (b)(1) of this section as made with respect to the general election, provided that:

(*1*) The contribution was made before the primary election;

(*2*) The contribution was not designated for a particular election;

(*3*) The contribution would exceed the limitation on contributions set forth in paragraph (b)(1) of this section if it were treated as a contribution made for the primary election;

(*4*) Such redesignation would not cause the contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section;

(*5*) The treasurer of the recipient authorized political committee notifies the contributor of the amount of the contribution that was redesignated and that the contributor may request a refund of the contribution; and

(*6*) Within sixty days from the date of the treasurer's receipt of the contribution, the treasurer shall provide notification required in paragraph (b)(5)(ii)(B)(5) of this section to the contributor by any written method including electronic mail.

(C) Notwithstanding paragraph (b)(5)(ii)(A) of this section or any other provision of this section, the treasurer of the recipient authorized political committee may treat all or part of the amount of the contribution that exceeds the contribution limits in paragraph (b)(1) of this section as made with respect to the primary election, provided that:

(*1*) The contribution was made after the primary election but before the general election;

(*2*) The contribution was not designated for a particular election;

(*3*) The contribution would exceed the limitation on contributions set forth in paragraph (b)(1) of this section if it were treated as a contribution made for the general election;

(*4*) Such redesignation would not cause the contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section;

(*5*) The contribution does not exceed the committee's net debts outstanding for the primary election;

(*6*) The treasurer of the recipient authorized political committee notifies the contributor of how the contribution was redesignated and that the contributor may request a refund of the contribution; and

(*7*) Within sixty days from the date of the treasurer's receipt of the contribution, the treasurer shall provide notification required in paragraph (b)(5)(ii)(C)(6) of this section to the

contributor by any written method, including electronic mail.

* * * * *

(c) * * *

(1) No person shall make contributions to the political committees established and maintained by a national political party in any calendar year that in the aggregate exceed $25,000.

(i) The contribution limitation in paragraph (c)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17.

(ii) The increased contribution limitation shall be in effect for the two calendar years starting on January 1 of the year in which the contribution limitation is increased.

(iii) In every odd-numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limitation in effect and place such information on the Commission's Web site.

* * * * *

(i) *Contributions by spouses.* The limitations on contributions of this section shall apply separately to contributions made by each spouse even if only one spouse has income.

* * * * *

(k) * * *

(3) * * *

(ii) (A) A contribution shall be considered to be reattributed to another contributor if—

(*1*) The treasurer of the recipient authorized political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and

(*2*) Within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

(B)(*1*) Notwithstanding paragraph (k)(3)(ii)(A) of this section or any other provision of this section, any excessive portion of a contribution described in paragraph (k)(3)(i) of this section that was made by a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless a different instruction is on the instrument or in a separate writing signed by the contributor(s), provided that such attribution would not cause any contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section.

(*2*) The treasurer of the recipient authorized political committee shall notify each contributor of how the contribution was attributed and that the contributor may request the refund of the excessive portion of the contribution if it is not intended to be a joint contribution.

(*3*) Within sixty days from the date of the treasurer's receipt of the contribution, the treasurer shall provide such notification to each contributor by any written method, including electronic mail.

(l) * * *

(4)(i) If a political committee chooses to rely on a postmark as evidence of the date on which a contribution was made, the treasurer shall retain the envelope or a copy of the envelope containing the postmark and other identifying information; and

(ii) If a political committee chooses to rely on the redesignation presumption in 11 CFR 110.1(b)(5)(ii)(B) or (C) or the reattribution presumption in 11 CFR 110.1(k)(3)(ii)(B), the treasurer shall retain a full-size photocopy of the check or written instrument, of any signed writings that accompanied the contribution, and of the notices sent to the contributors as required by 11 CFR 110.1(b)(5)(ii)(B) and (k)(3)(ii)(B).

(5) If a political committee does not retain the written records concerning designation required under 11 CFR 110.1(l)(1), the contribution shall not be considered designated in writing for a particular election, and the provisions of 11 CFR 110.1(b)(2)(ii) or 11 CFR 110.2(b)(2)(ii) shall apply. If a political committee does not retain the written records concerning redesignation or reattribution required under 11 CFR 110.1(l)(2), (3), (4)(ii) or (6), including the contributor notices, the redesignation or reattribution shall not be effective, and the original designation or attribution shall control.

* * * * *

5. Section 110.2 is amended by revising paragraph (e) to read as follows:

§ 110.2 Contributions by multicandidate political committees (2 U.S.C. 441a(a)(2)).

* * * * *

(e) *Contributions by political party committees to Senatorial candidates.*

(1) Notwithstanding any other provision of the Act, or of these regulations, the Republican and Democratic Senatorial campaign committees, or the national committee of a political party, may make contributions of not more than a combined total of $35,000 to a candidate for nomination or election to the Senate during the calendar year of the election for which he or she is a candidate. Any contribution made by such committee to a Senatorial candidate under this paragraph in a year other than the calendar year in which the election is held shall be considered to be made during the calendar year in which the election is held.

(2) The contribution limitation in paragraph (e)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17. The increased contribution limitation shall be in effect for the two calendar years starting on January 1 of the year in which the contribution limitation is increased. In every odd-numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limitation in effect and place such information on the Commission's Web site.

* * * * *

6. Section 110.4 is amended by revising the section heading and by removing and reserving paragraph (a) to read as follows.

§ 110.4 Contributions in the name of another; cash contributions (2 U.S.C. 441f, 441g, 432(c)(2)).

(a) [Removed and reserved].

* * * * *

7. Section 110.5 is amended by revising the section heading and paragraphs (a), (b), (d) and (e) to read as follows:

§ 110.5 Aggregate bi-annual contribution limitation for individuals (2 U.S.C. 441a(a)(3)).

(a) *Scope.* This section applies to all contributions made by any individual, except individuals prohibited from making contributions under 11 CFR 110.19 and 110.20 and 11 CFR part 115.

(b) *Bi-annual limitations.*

(1) In the two-year period beginning on January 1 of an odd-numbered year and ending on December 31 of the next even-numbered year, no individual shall make contributions aggregating more than $95,000, including no more than:

(i) $37,500 in the case of contributions to candidates and the authorized committees of candidates; and

(ii) $57,500 in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees that are not political committees of any national political parties.

(2) Contributions to candidates made under the increased contribution limitations under 11 CFR part 400,

during periods in which such candidates may accept such contributions, are not subject to the contribution limitations of paragraph (b)(1) of this section.

(3) The contribution limitations in paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17. The increased contribution limitations shall be in effect for the two calendar years starting on January 1 of the year in which the contribution limitations are increased.

(4) In every odd-numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limitations in effect and place such information on the Commission's Web site.

* * * * *

(d) *Independent expenditures.* The bi-annual limitation on contributions in this section applies to contributions made to persons, including political committees, making independent expenditures under 11 CFR part 109.

(e) *Contributions to delegates and delegate committees.* The bi-annual limitation on contributions in this section applies to contributions to delegate and delegate committees under 11 CFR 110.14.

8. Section 110.9 is revised to read as follows:

§ 110.9 Violation of limitations.

No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of 11 CFR part 110. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this part 110.

§§ 110.15 and 110.16 [Reserved]

9. Sections 110.15 and 110.16 are added and reserved.

10. Section 110.17 is added to read as follows:

§ 110.17 Price index increase.

(a) *Price index increases for party committee expenditure limitations and Presidential candidate expenditure limitations.* The limitations on expenditures established by 11 CFR 110.7 and 110.8 shall be increased by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period.

(1) Each expenditure limitation so increased shall be the expenditure limitation in effect for that calendar year.

(2) For purposes of this paragraph (a), the term base period means calendar year 1974.

(b) *Price index increases for contributions by persons, by political party committees to Senatorial candidates, and the bi-annual aggregate contribution limitation for individuals.* The limitations on contributions established by 11 CFR 110.1(b) and (c), 110.2(e), and 110.5, shall be increased only in odd-numbered years by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period.

(1) The increased contribution limitations shall be in effect as provided in 11 CFR 110.1(b)(1)(ii), 110.1(c)(1)(ii), 110.2(e)(2) and 110.5(b)(3).

(2) For purposes of this paragraph (b) the term *base period* means calendar year 2001.

(c) *Rounding of price index increases.* If any amount after the increases under paragraph (a) or (b) of this section is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(d) *Definition of price index.* For purposes of this section, the term *price index* means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

(e) *Publication of price index increases.* In every odd-numbered year, the Commission will publish in the **Federal Register** the amount of the expenditure and contribution limitations in effect and place such information on the Commission's Web site.

§ 110.18 [Reserved]

11. Section 110.18 is added and reserved.

12. Section 110.19 is added to read as follows:

§ 110.19 Contributions and donations by minors.

(a) *Contributions to candidates.* An individual who is 17 years old or younger shall not make a contribution to a candidate for Federal office, including a contribution to any of the following:

(1) A principal campaign committee designated pursuant to 11 CFR 101.1(a);

(2) Any other political committee authorized by a candidate under 11 CFR 101.1(b) and 102.13 to receive contributions or make expenditures on behalf of such candidate; or

(3) Any entity directly or indirectly established, financed, maintained or controlled by one or more Federal candidates.

(b) *Contributions and donations to committees of political parties.* An individual who is 17 years old or younger shall not make a contribution or donation to:

(1) A national, State, district, or local committee of a political party, including a national congressional campaign committee;

(2) Any entity directly or indirectly established, financed, maintained or controlled by a national, State, district, or local committee of a political party, including a national congressional campaign committee; or

(3) Any account of a committee or entity described in paragraphs (b)(1) and (b)(2) of this section.

(c) *Contributions to political committees that are not authorized committees or committees of political parties.* An individual who is 17 years old or younger may make contributions to a political committee not described in paragraph (a) or (b) of this section that in the aggregate do not exceed the limitations on contributions of 11 CFR 110.1 and 110.5, if—

(1) The decision to contribute is made knowingly and voluntarily by that individual;

(2) The funds, goods, or services contributed are owned or controlled exclusively by that individual, such as income earned by that individual, the proceeds of a trust for which that individual is the beneficiary, or a savings account opened and maintained exclusively in that individual's name;

(3) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual; and

(4) The contribution is not earmarked or otherwise directed to one or more Federal candidates, authorized committees, political party committees, or other organizations covered by paragraph (a) or (b) of this section. See 11 CFR 110.6.

(d) *Volunteer Services.* Nothing in this section shall prohibit an individual who is 17 years old or younger from providing volunteer services to any Federal candidate or political committee.

(e) *Definition of directly or indirectly establish, maintain, finance, or control. Directly or indirectly establish, maintain, finance, or control* has the same meaning as in 11 CFR 300.2(c).

13. Section 110.20 is added to read as follows:

§ 110.20 Prohibition on contributions, donations, expenditures, independent expenditure, and disbursements by foreign nationals. (2 U.S.C. 441e).

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Disbursement* has the same meaning as in 11 CFR 300.2(d).

(2) *Donation* has the same meaning as in 11 CFR 300.2(e).

(3) *Foreign national* means—

(i) A foreign principal, as defined in 22 U.S.C. 611(b); or

(ii) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined in 8 U.S.C. 1101(a)(20); however,

(iii) *Foreign national* shall not include any individual who is a citizen of the United States, or who is a national of the United States as defined in 8 U.S.C. 1101(a)(22).

(4) *Knowingly* means that a person must:

(i) Have actual knowledge that the source of the funds solicited, accepted or received is a foreign national;

(ii) Be aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national; or

(iii) Be aware of facts that would lead a reasonable person to inquire whether the source of the funds solicited, accepted or received is a foreign national, but the person failed to conduct a reasonable inquiry.

(5) For purposes of paragraph (a)(4) of this section, pertinent facts include, but are not limited to:

(i) The contributor or donor uses a foreign passport or passport number for identification purposes;

(ii) The contributor or donor provides a foreign address;

(iii) The contributor or donor makes a contribution or donation by means of a check or other written instrument drawn on a foreign bank or by a wire transfer from a foreign bank; or

(iv) The contributor or donor resides abroad.

(6) *Solicit* has the same meaning as in 11 CFR 300.2(m).

(7) *Safe Harbor.* For purposes of paragraph (a)(4)(iii) of this section, a person shall be deemed to have conducted a reasonable inquiry if he or she seeks and obtains copies of current and valid U.S. passport papers for U.S. citizens who are contributors or donors described in paragraphs (a)(5)(i) through (iv) of this section. No person may rely on this safe harbor if he or she has actual knowledge that the source of the funds solicited, accepted, or received is a foreign national.

(b) *Contributions and donations by foreign nationals in connection with elections.* A foreign national shall not, directly or indirectly, make a contribution or a donation of money or other thing of value, or expressly or impliedly promise to make a contribution or a donation, in connection with any Federal, State, or local election.

(c) *Contributions and donations by foreign nationals to political committees and organizations of political parties.* A foreign national shall not, directly or indirectly, make a contribution or donation to:

(1) A political committee of a political party, including a national party committee, a national congressional campaign committee, or a State, district, or local party committee, including a non-Federal account of a State, district, or local party committee, or

(2) An organization of a political party whether or not the organization is a political committee under 11 CFR 100.5.

(d) *Contributions and donations by foreign nationals for office buildings.* A foreign national shall not, directly or indirectly, make a contribution or donation to a committee of a political party for the purchase or construction of an office building. *See* 11 CFR 300.10 and 300.35.

(e) *Disbursements by foreign nationals for electioneering communications.* A foreign national shall not, directly or indirectly, make any disbursement for an electioneering communication as defined in 11 CFR 100.29.

(f) *Expenditures, independent expenditures, or disbursements by foreign nationals in connection with elections.* A foreign national shall not, directly or indirectly, make any expenditure, independent expenditure, or disbursement in connection with any Federal, State, or local election.

(g) *Solicitation, acceptance, or receipt of contributions and donations from foreign nationals.* No person shall knowingly solicit, accept, or receive from a foreign national any contribution or donation prohibited by paragraphs (b) through (d) of this section.

(h) *Providing substantial assistance.*

(1) No person shall knowingly provide substantial assistance in the solicitation, making, acceptance, or receipt of a contribution or donation prohibited by paragraphs (b) through (d), and (g) of this section.

(2) No person shall knowingly provide substantial assistance in the making of an expenditure, independent expenditure, or disbursement prohibited by paragraphs (e) and (f) of this section.

(i) *Participation by foreign nationals in decisions involving election-related activities.* A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee.

Dated: November 8, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–28886 Filed 11–18–02; 8:45 am]

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Federal Register

Tuesday,
November 19, 2002

Part V

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Whole Effluent Toxicity Test Methods; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–7408–6]

RIN 2040–AD73

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Whole Effluent Toxicity Test Methods; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final regulation, EPA ratifies approval of several test procedures for measuring the toxicity of effluents and receiving waters. The test procedures are commonly referred to as whole effluent toxicity or WET test methods. EPA also withdraws two WET test methods from the list of nationally-approved biological test procedures for the analysis of pollutants. This action also revises some of the WET test methods to improve performance and increase confidence in the reliability of the results. Today's action will satisfy settlement agreement obligations designed to resolve litigation over an earlier rulemaking that originally approved WET test methods.

DATES: This regulation is effective December 19, 2002. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. Eastern Standard Time on December 3, 2002 in accordance with 40 CFR 23.7. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Marion Kelly; Engineering and Analysis Division (4303T); Office of Science and Technology; Office of Water, U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, NW; Washington, DC 20460, or call (202) 566–1045, or E-mail at kelly.marion@epa.gov. For technical information regarding method changes in today's rule, contact Debra L. Denton, USEPA Region 9, c/o SWRCB, 1001 I Street, Sacramento, CA 95814, or call (916) 341–5520, or E-mail *denton.debra@epa.gov.*

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I. General Information

A. Potentially Regulated Entities

EPA Regions, as well as States, Territories, and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act. In doing so, NPDES permitting authorities make a number of discretionary choices associated with permit writing, including the selection of pollutants to be measured and, in many cases, limits for those pollutants in permits. If EPA has ''approved'' (*i.e.*, promulgated through rulemaking) standardized test procedures for a given pollutant, the NPDES permitting authority must specify one of the approved testing procedures or an EPA-approved alternate test procedure for the measurements required under the permit. In addition, when a State, Territory, or authorized Tribe provides certification of Federal licenses under Clean Water Act section 401, States, Territories and Tribes are directed to use the approved testing procedures. Categories and entities that may be regulated include:

Category	Examples of potentially regulated entities
Federal, State, Territorial, and Indian Tribal Governments.	Federal, State, Territorial, and Tribal entities authorized to administer the NPDES permitting program; Federal, State, Territorial, and Tribal entities providing certification under Clean Water Act section 401.
Municipalities	Municipal operators of NPDES facilities required to monitor whole effluent toxicity.
Industry	Private operators of NPDES facilities required to monitor whole effluent toxicity.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by

this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility or organization is regulated by this action you should carefully examine 40 CFR 122.41(j)(4), 122.44(i)(1)(iv), and 122.21. If you have questions regarding the applicability of this action to a particular entity, consult the first person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of Related Information?

1. Docket

EPA has established an official public docket for this action under Docket ID No. WET–X (Electronic Docket No. OW–2002–0024). 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 Office of Water (OW) Docket, in the EPA Docket Center (EPA/DC), EPA West, Room B–102, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m. EST, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OW Docket is (202) 566–2426.

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 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 identification number.

II. Statutory Authority

EPA promulgates today's rule pursuant to the authority of sections 301, 304(h), 402, and 501(a) of the Clean Water Act (''CWA'' or the ''Act''), 33 U.S.C. 1311, 1314(h), 1342, 1361(a) (the ''Act''). Section 101(a) of the Act sets forth the ''goal of restoring and maintaining the chemical, physical, and biological integrity of the nation's waters'' and prohibits ''the discharge of toxic pollutants in toxic amounts.'' Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to ''promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act.'' Section 501(a) of the Act authorizes the Administrator to ''prescribe such regulations as are necessary to carry out his function under this Act.'' EPA publishes CWA analytical method regulations at 40 CFR part 136. The Administrator also has made these test procedures applicable to monitoring and reporting of NPDES permits (40 CFR part 122, §§ 122.21, 122.41, 122.44, and 123.25), and implementation of the pretreatment standards issued under section 307 of the Act (40 CFR part 403, §§ 403.10 and 403.12).

III. Background

A. Regulatory History

On October 16, 1995, EPA amended the ''Guidelines Establishing Test Procedures for the Analysis of Pollutants,'' 40 CFR part 136, to add a series of standardized toxicity test methods to the list of Agency approved methods for conducting required testing of aqueous samples under the CWA (60 FR 53529) (WET final rule). The WET final rule amended 40 CFR 136.3 (Tables IA and II) by adding acute toxicity methods and short-term methods for estimating chronic toxicity. These methods measure the toxicity of effluents and receiving waters to freshwater, marine, and estuarine organisms. Acute methods (USEPA, 1993) generally use death of some percentage of the test organisms during 24 to 96 hour exposure durations as the measured effect of an effluent or receiving water. The short-term methods for estimating chronic toxicity (USEPA, 1994a; USEPA, 1994b) use longer durations of exposure (up to nine days) to ascertain the adverse effects of an effluent or receiving water on survival, growth, and/or reproduction of the organisms. The methods listed at 40 CFR part 136 for measuring aquatic toxicity are referred to collectively as ''WET test methods,'' methods specific to measuring acute toxicity are referred to as ''acute'' test methods, and short-term methods for estimating chronic toxicity are referred to as ''chronic'' methods.

EPA standardized the test procedures for conducting the approved acute and chronic WET test methods in the following three method manuals, which were incorporated by reference in the WET final rule: Methods for Measuring the Acute Toxicity of Effluents and Receiving Water to Freshwater and Marine Organisms, Fourth Edition, August 1993, EPA/600/4–90/027F (acute method manual); Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms, Third Edition, July 1994, EPA/600/4–91/002 (freshwater chronic method manual); and Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Marine and Estuarine Organisms, Second Edition, July 1994, EPA/600/4–91/003 (marine chronic method manual). EPA explains in the Technical Support Document for Water Quality-Based Toxics Control (TSD) (USEPA, 1991) that these WET test methods, along with chemical controls and bioassessments, are a component of EPA's integrated strategy for water quality-based toxics control. The TSD recommends that WET tests using the most sensitive of at least three test species from different phyla be used for monitoring the toxicity of effluents.

Since the 1995 WET final rule, EPA has issued several rulemakings and guidance documents in fulfillment of settlement agreements to resolve judicial challenges to the WET final rule (see Settlement Agreement discussion in Section III.B). On February 2, 1999, EPA published technical corrections that incorporated into the WET final rule an errata document to correct minor errors and omissions, provide clarification, and establish consistency among the WET final rule and method manuals (64 FR 4975; February 2, 1999). On July 18, 2000, EPA announced the availability of a WET Variability Guidance Document (65 FR 44528; July 18, 2000). On July 28, 2000, EPA published the availability of a WET Method Guidance Document (65 FR 46457; July 28, 2000). On September 28, 2001, EPA proposed specific revisions to the WET test methods, and EPA proposed to ratify its previous

approval of these methods (66 FR 49794; September 28, 2001) (*see* section III.C). Today, EPA takes final action on the September 2001 proposal.

B. Settlement Agreement

Following promulgation of the WET methods on October 16, 1995, several parties challenged the rulemaking (*Edison Electric Institute* v. *EPA,* No. 96–1062 (D.C. Cir.); *Western Coalition of Arid States* v. *EPA,* No. 96–1124 (D.C. Cir.); and *Lone Star Steel Co.* v. *EPA,* No. 96–1157 (D.C. Cir.)). To resolve the litigation, EPA entered into settlement agreements with the various parties and agreed to publish a technical correction notice, publish a method guidance document and a variability guidance document, conduct an interlaboratory variability study, publish a peer-reviewed interlaboratory variability study report (including a table of coefficients of variation), address pathogen contamination, propose specific technical method changes, and propose to ratify or withdraw WET test methods evaluated in the interlaboratory variability study. Today's final action fulfills EPA's obligations under the settlement agreements.

C. Proposed Rule

On September 28, 2001, EPA proposed modifications to the WET test methods (66 FR 49794). The proposal included updates to the methods, minor corrections and clarifications, and specific technical changes in response to stakeholder concerns. Specifically, EPA proposed technical changes to (1) require ''blocking'' by known parentage in the Ceriodaphnia dubia Survival and Reproduction Test; (2) specify procedures to control pH drift that may occur during testing; (3) incorporate review procedures for the evaluation of concentration-response relationships; (4) clarify recommendations regarding nominal error rate assumptions; (5) clarify limitations in the generation of confidence intervals; (6) add guidance on dilution series selection; (7) clarify requirements regarding acceptable dilution waters; and (8) add procedures for determining and minimizing the adverse impact of pathogens in the Fathead Minnow Survival and Growth Test.

EPA also solicited comment on other modifications to improve the performance of the methods, including the incorporation of variability criteria and increases in the minimum number of test replicates. EPA proposed to incorporate WET method changes into new editions of each of the WET method manuals (USEPA, 1993; USEPA, 1994a; USEPA, 1994b) and to update Table IA at 40 CFR part 136 to cite the new method manual editions.

In the September 28, 2001 proposed rule, EPA also proposed to ratify 11 of the 12 WET methods evaluated in EPA's WET Interlaboratory Variability Study. EPA proposed to ratify the Ceriodaphnia dubia Acute Test; Fathead Minnow Acute Test; Sheepshead Minnow Acute Test; Inland Silverside Acute Test; Ceriodaphnia dubia Survival and Reproduction Test; Fathead Minnow Larval Survival and Growth Test; Selenastrum capricornutum Growth Test; Sheepshead Minnow Larval Survival and Growth Test; Inland Silverside Larval Survival and Growth Test; Mysidopsis bahia Survival, Growth, and Fecundity Test; and Champia parvula Reproduction Test. To support ratification of these methods, EPA presented the results of the WET Interlaboratory Variability Study (USEPA, 2001a; USEPA, 2001b), a national study of 12 WET methods involving 56 laboratories and over 700 samples. EPA proposed to withdraw Holmesimysis costata as an acceptable substitute species for use in the Mysidopsis bahia Acute Test method protocol. In its place, EPA proposed a new Holmesimysis costata Acute Test protocol.

EPA invited public comment for 60 days and later extended the comment period for an additional 45 days (66 FR 58693; November 23, 2001). EPA received 38 comment packages during the allotted comment period.

IV. Summary of Final Rule

A. Proposed WET Method Changes

Today's action incorporates most of the method changes proposed on September 28, 2001 (66 FR 49794) with minor modifications to address public comments. For a summary of major changes from the proposed rule, including proposed actions not incorporated in today's rule, see Section V of this preamble. Method manual revisions promulgated in today's action include:

- Minor corrections and clarifications,
- Incorporation of updated method precision data,
- Requirement for ''blocking'' by known parentage in the Ceriodaphnia dubia Survival and Reproduction Test,
- Specification of procedures to control pH drift that may occur during testing,
- Review procedures for the evaluation of concentration-response relationships,
- Clarification of limitations in the generation of confidence intervals,
- Guidance on dilution series selection,
- Clarification of requirements regarding acceptable dilution waters,
- Procedures for determining and minimizing the adverse impact of pathogens in the Fathead Minnow Survival and Growth Test,
- Requirement for the use of ethylenediaminetetraacetic acid (EDTA) in the Selenastrum capricornutum Growth Test.

B. Additional Revisions to WET Test Methods

In addition to requesting comment on the specific modifications to WET test methods mentioned above, EPA solicited comment on any additional modifications that would improve the overall performance of the methods. Specifically, EPA solicited comment on application of variability criteria to test results, modification of test acceptability criteria, and increases in test replication requirements. In response to comments, today's final rule also incorporates the following additional modifications to WET test methods:

- Requirement to meet specific variability criteria when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing,
- Increases in the required minimum number of replicates for several tests,
- Clarification of required and recommended test conditions for the purposes of reviewing WET test data submitted under NPDES permits,
- Additional clarification of sample holding times,
- Clarification of requirements for reference toxicant testing and additional guidance on evaluating reference toxicant test results,
- Clarification of allowable sample holding temperatures,
- Clarification of biomass as the measured endpoint in survival and growth tests,
- Clarification of requirements for measuring total residual chlorine in WET samples,
- Modification of the test termination criteria for the Ceriodaphnia dubia Survival and Reproduction Test to exclude the counting of fourth brood neonates,
- Additional minor corrections identified by commenters.

C. Ratification and Withdrawal of Methods

Based on the WET Interlaboratory Variability Study, peer review comments, and comments on the proposed rule, EPA is ratifying ten methods evaluated in the WET

Interlaboratory Variability Study and withdrawing two methods. EPA is ratifying the Ceriodaphnia dubia Acute Test; Fathead Minnow Acute Test; Sheepshead Minnow Acute Test; Inland Silverside Acute Test; Ceriodaphnia dubia Survival and Reproduction Test; Fathead Minnow Larval Survival and Growth Test; Selenastrum capricornutum Growth Test; Sheepshead Minnow Larval Survival and Growth Test; Inland Silverside Larval Survival and Growth Test; and Mysidopsis bahia Survival, Growth, and Fecundity Test. In accordance with EPA's Report to Congress on the Availability, Adequacy, and Comparability of testing procedures (USEPA, 1988), EPA has confirmed that the methods ratified today are repeatable and reproducible (*i.e.*, exhibit adequate within-laboratory and between-laboratory precision), available and applicable (*i.e.*, adaptable to a wide variety of laboratories and use widely available organisms and supplies), and representative (*i.e.*, predictive of receiving system impacts). *See* section VI.C.1 of this preamble.

EPA's WET Interlaboratory Variability Study demonstrated that the methods ratified today generally have a high rate of successful completion, do not often produce false positive results, and exhibit precision comparable to chemical methods approved at 40 CFR part 136. Table 1 summarizes the performance characteristics for the ten WET test methods ratified today. In ratifying these WET test methods, EPA reaffirms the conclusion expressed in the 1995 WET final rule (60 FR 53529; October 16, 1995), that these methods, including the modifications in today's rule, are applicable for use in NPDES permits.

TABLE 1.—SUMMARY OF PERFORMANCE CHARACTERISTICS FOR RATIFIED WET METHODS

Test method	Successful test completion rate (%)	False positive rate [a] (%)	Interlaboratory precision (%CV) [b]
Ceriodaphnia dubia Acute Test	95.2	0.00	29.0
Ceriodaphnia dubia Survival and Reproduction Test	82.0	3.70	35.0
Fathead Minnow Acute Test	100	0.00	20.0
Fathead Minnow Larval Survival and Growth Test	98.0	4.35	20.9
Selenastrum capricornutum Growth Test	63.6	0.00	34.3
Mysidopsis bahia Survival, Growth, and Fecundity Test	97.7	0.00	41.3
Sheepshead Minnow Acute Test	100	0.00	26.0
Sheepshead Minnow Larval Survival and Growth Test	100	0.00	10.5
Inland Silverside Acute Test	94.4	0.00	38.5
Inland Silverside Larval Survival and Growth Test	100	0.00	43.8

[a] False positive rates reported for each method represent the higher of false positive rates observed for hypothesis testing or point estimate endpoints.

[b] Coefficients of variation (CVs) reported for each method represent the CV of LC50 values for acute test methods and IC25 values for chronic test methods. CVs reported are based on total interlaboratory variability (including within-laboratory and between-laboratory components of variability) and averaged across sample types.

EPA is withdrawing the Holmesimysis costata Acute Test and the Champia parvula Reproduction Test methods from 40 CFR part 136. EPA was unable to obtain interlaboratory precision data for these methods in the WET Interlaboratory Variability Study due to laboratory unavailability. EPA was unable to contract with a minimum of six laboratories qualified and willing to conduct these test methods within the time frame of the Study. Due to this lack of interlaboratory precision data generated from the Study for these methods, several commenters recommended that these methods not be approved at 40 CFR part 136 for national use. In response, today's action removes the Holmesimysis costata Acute Test method (1995 version) and the Champia parvula Reproduction Test method from the list of test methods approved for nationwide use at 40 CFR part 136.

By withdrawing these methods from 40 CFR part 136 for nationwide use, EPA does not reject their use on more limited bases. Today's withdrawal simply reflects that the Agency has not validated these methods for national use. EPA continues to support the use of these methods for applications other than for the determination of compliance with NPDES permit limits, as well for limited, localized, or regional use where the methods have been validated by other entities. In addition, EPA continues to support the use of the Holmesimysis costata Acute Test to measure toxicity to marine organisms of the Pacific Ocean. Because test procedures for measuring toxicity to estuarine and marine organisms of the Pacific Ocean are not listed at 40 CFR part 136, permit writers may include (under 40 CFR 122.41(j)(4) and 122.44(i)(1)(iv)) requirements for the use of test procedures that are not approved at part 136, such as the Holmesimysis costata Acute Test and other West Coast WET methods (USEPA, 1995b) on a permit-by-permit basis.

D. Amendment to 40 CFR 136.3, Table IA

Today's rule amends 40 CFR 136.3 by removing the Champia parvula Reproduction Test method (Method 1009.0) from Table IA, modifying the reference to acute ''mysid'' tests in Table IA to include only Mysidopsis bahia (and not Holmesimysis costata), adding method numbers to acute tests, revising the parameter measured in marine tests to refer to organisms ''of the Atlantic Ocean and Gulf of Mexico,'' and modifying footnotes and references to cite the updated versions of the method manuals.

V. Changes From the Proposed Rule

A. Proposed WET Method Changes

On September 28, 2001, EPA proposed technical method changes to improve the performance and clarity of WET test methods and to address specific stakeholder concerns. These provisions were presented and discussed in section III of the proposed rule preamble (66 FR 49794) and detailed in the document titled, Proposed Changes to Whole Effluent Toxicity Method Manuals (USEPA, 2001e). In today's action, EPA is withdrawing or revising some of the proposed revisions based on comments received on the proposed rule. These revisions are discussed below. Other comments that EPA addressed but did not result in changes from the proposal are discussed in section VI.

1. Blocking by Known Parentage

EPA proposed specific method manual modifications that would require blocking by known parentage in the Ceriodaphnia dubia Survival and Reproduction Test method. Today, EPA is finalizing the proposed method changes with a minor modification to clarify that neonates from a single known parent may be used in the initiation of more than one test. This minor modification mitigates some commenters' concerns regarding the increased cost of blocking by known parentage. Blocking by known parentage requires the use of at least six neonates from each of at least ten separate parents. If more than six neonates from a given parent remain after allocating organisms to a test, those remaining neonates may be discarded, used as future culture organisms, or used in another test initiated on the same day (provided that the neonates meet age requirements).

2. pH Drift

During the conduct of static or static-renewal WET tests, the pH in test containers may fluctuate or drift from the initial pH value. EPA proposed specific procedures that may be used to control this pH drift in chronic WET tests. Today, EPA is revising the specified procedures in response to stakeholder comments. Some commenters requested that EPA clarify the pH that should be maintained in pH-controlled tests. Today's action clarifies that, when the test objective is to determine the toxicity of an effluent in the receiving water, the target pH to maintain in a pH-controlled test is the pH of the receiving water measured at the edge of any mixing zone authorized in a permit. When the test objective is to determine the absolute toxicity of the effluent, the target pH to maintain in a pH-controlled test is the pH of the sample upon completion of collection. The revisions also clarify that in pH-controlled tests, the pH should be maintained within ±0.2 pH units of the target pH in freshwater chronic tests and within ±0.3 pH units for marine/estuarine chronic tests. EPA also added guidance on interpreting the results of parallel testing.

The revisions also remove language from the proposed method manual changes that warned about effects from pH drift in the absence of pH-dependent toxicants. To address the concern that the daily cycle of pH drift and renewal caused artifactual toxicity by ''shocking'' test organisms, EPA proposed language in the method manuals that warned of such potential interference from pH drift even when pH-dependent toxicants were not present. EPA specifically requested that commenters provide ''any data that show the value of proposed pH control measures in situations where ammonia or other pH-dependent toxicants are not present.'' EPA did not receive such data. EPA believes that pH drift alone is not a test interference if pH is within the organism's tolerance range. The degree of pH drift typically observed in effluent samples should generally only interfere with test results if the sample contains a compound with toxicity that is pH dependent and at a concentration that is near the toxicity threshold. Because EPA did not receive data to suggest otherwise, EPA is removing any reference to pH drift interference in the absence of pH-dependent toxicants.

Many commenters recommended that EPA include the proposed pH control guidance for acute test methods as well as chronic methods because of the insufficiency of static renewal testing to control the pH drift and the impracticability and cost of flowthrough testing. In today's action, EPA has not provided additional techniques that involve modification of the sample to control pH drift in acute test methods, because EPA believes that the current acute methods provide adequate remedies for pH drift without modifying the sample. In acute tests, pH drift may be remedied by more frequent test renewals or use of flowthrough testing. While EPA agrees that flowthrough testing is more costly than static or static renewal testing, today's action does not impose any additional costs by requiring flowthrough testing. Today's action simply retains the options for pH control that are currently described in the acute method manual and does not add additional options.

3. Nominal Error Rates

Today's action does not incorporate the proposed method manual changes regarding nominal error rates. The method manuals maintain the original statement recommending a nominal error rate of 0.05. EPA proposed changes to its recommendation regarding nominal error rate assumptions, specifically, the change from 0.05 to 0.01 under specific circumstances. EPA proposed changes to its recommended error rate assumptions based on the settlement agreement, which identified the circumstances under which EPA would change its recommendations regarding nominal error rate reductions. These specified circumstances do not necessarily represent cases where the risk of false positive results increase, but rather situations for which the petitioners sought specific relief.

Commenters on the proposed rule commented that there was no scientific justification for reducing nominal error rate assumptions in only these circumstances and recommended reducing the nominal error rate in all circumstances. EPA agrees with the commenters that there is not a scientific justification for allowing reduced nominal error rates in these specific circumstances, but disagrees that nominal error rates should be reduced in all circumstances. Some commenters claimed that a reduced nominal error rate is needed to improve confidence in the test results. Reducing the nominal error rate, however, does not inherently improve confidence in test results. Because of the relationship between Type I and Type II statistical errors, reductions in nominal error rates improve confidence in results that identify toxicity, but reduce confidence in results that do not identify toxicity. This reduces the power of the test and the chance of identifying toxic discharges, thereby reducing environmental protection. In addition, the statistical test designs (*i.e.,* test replication requirements) of WET methods and all supporting method validation data were based on a nominal error rate of 0.05. Because there is no scientific justification for recommending reductions in nominal error rates in the circumstances proposed and commenters did not provide such supporting rationale or data, EPA has not incorporated the proposed method manual recommendations regarding nominal error rates. The method manuals maintain the original recommendation to assume a nominal error rate of 0.05.

4. Dilution Series

EPA is finalizing the proposed guidance on the selection of dilution series in WET testing. In addition to the proposed guidance, EPA has made minor modifications in response to comments to further clarify that no one particular dilution series is required. Specific dilution series used in the WET method manuals are provided as examples and recommendations, not requirements.

5. Dilution Waters

EPA is finalizing the proposed guidance on the selection of dilution waters in WET testing. In addition to the proposed guidance, EPA has made minor modifications in response to comments to further clarify that no single dilution water type is required for all tests. The method manuals now

clarify that receiving waters, synthetic waters, or synthetic waters adjusted to approximate receiving water characteristics may be used for dilution water, provided that the water meets the qualifications for an acceptable dilution water. EPA clarified in the method manuals that an acceptable dilution water is one which is appropriate for the objectives of the test; supports adequate performance of the test organisms with respect to survival, growth, reproduction, or other responses that may be measured in the test (*i.e.,* consistently meets test acceptability criteria for control responses); is consistent in quality; and does not contain contaminants that could produce toxicity. EPA also provided clarification on the use of dual controls. When using dual controls, the dilution water control should be used for determining the acceptability of the test and for comparisons with the tested effluent. If test acceptability criteria (*e.g.,* minimum survival, reproduction, or growth) are not met in the dilution water control, the test must be repeated on a newly collected sample. Comparisons between responses in the dilution water control and in the culture water control can be used to determine if the dilution water, which may be a receiving water, possesses ambient toxicity.

6. Pathogen Interference

In today's action, EPA finalizes the proposed guidance on controlling pathogen interference in the Fathead Minnow Larval Survival and Growth Test with several modifications to address commenter concerns. Some commenters were concerned that the proposed guidance allowed the use of pathogen control techniques such as UV, chlorination, filtration, and antibiotics only after the recommended modified test design (fewer fish per cup) failed to control pathogen interference. Today's revisions clarify that EPA recommends pathogen control techniques that do not modify the sample, such as the modified test design technique, over ones that do. Upon approval by the regulatory authority, however, analysts also may use various sample sterilization techniques that modify the sample to control pathogen interference, provided that parallel testing of altered and unaltered samples further confirms the presence of pathogen interference and demonstrates successful pathogen control.

The manuals also now provide further explanation regarding the purpose for and required extent of pathogen source determination. Commenters were concerned that EPA was requiring permittees to generate data that was irrelevant to correcting for pathogen test interference. This is not the case. Determining whether tests are adversely affected by pathogens in the effluent or pathogens in the receiving water used for test dilution is an important first step in selecting an appropriate pathogen control technique. If the source of interfering pathogens in the test is the receiving water used as the dilution water, then pathogen interference may be controlled by simply using an alternative dilution water. If the source of interfering pathogens in the test is the effluent, then pathogen control techniques are appropriate to control the interference. To further address the comments, EPA removed mention of pathogen source identification beyond determining whether the pathogen source was the effluent or dilution water. EPA also made several minor modifications in response to comments, including an acknowledgment that pathogen control techniques may not eliminate pathogens, but should minimize the adverse influence of pathogens so that test results are not confounded by mortality due to pathogens.

7. EDTA in the Selenastrum capricornutum Growth Test

In the WET Interlaboratory Variability Study, EPA found that performance of the Selenastrum capricornutum Growth Test was much higher (lower interlaboratory variability and lower false positive rate) when the test was conducted with EDTA (ethylenediaminetetraacetic acid). Based on this finding, EPA proposed to recommend the use of EDTA in the Selenastrum capricornutum Growth Test. Several commenters expressed concern that EPA only recommended, rather than required, the use of EDTA. Commenters stated that this recommendation was not sufficient to ensure the acceptable performance of the method and encouraged EPA to require the use of EDTA. To address these comments, the Selenastrum capricornutum Growth Test now requires the addition of EDTA to nutrient stock solutions when conducting the Selenastrum capricornutum Growth Test and submitting data under NPDES permits. To address concerns that EDTA may interfere with (*i.e.*, mask) the toxicity of metals, the method continues to caution that the addition of EDTA may cause the Selenastrum capricornutum Growth Test to underestimate the toxicity of metals. EPA cautions regulatory authorities to consider this possibility when selecting test methods for monitoring effluents that are suspected to contain metals. As recommended in EPA's Technical Support Document for Water Quality-Based Toxics Control (TSD) (USEPA, 1991), the most sensitive of at least three test species from different phyla should be used for monitoring the toxicity of effluents.

B. Additional Revisions to WET Test Methods

1. Variability Criteria

Today's action incorporates mandatory variability criteria for five chronic test methods. EPA recommends the use of point estimation techniques over hypothesis testing approaches for calculating endpoints for effluent toxicity tests under the NPDES Permitting Program. However, to reduce the within-test variability and to increase statistical sensitivity when test endpoints are expressed using hypothesis testing rather than the preferred point estimation techniques, variability criteria must be applied as a test review step when NPDES permits require sublethal hypothesis testing endpoints (*i.e.*, no observed effect concentration (NOEC) or lowest observed effect concentration (LOEC)) and the effluent has been determined to have no toxicity at the permitted receiving water concentration These variability criteria must be applied for the following methods: Fathead Minnow Larval Survival and Growth Test; Ceriodaphnia dubia Survival and Reproduction Test; Selenastrum capricornutum Growth Test; Mysidopsis bahia Survival, Growth, and Fecundity Test; and Inland Silverside Larval Survival and Growth Test. Within-test variability, measured as the percent minimum significant difference (PMSD), must be calculated and compared to upper bounds established for test PMSDs. Under this new requirement, tests conducted under NPDES permits that fail to meet the variability criteria (*i.e.*, PMSD upper bound) and show ''no toxicity'' at the permitted receiving water concentration (*i.e.*, no significant difference from the control at the receiving water concentration or above) are considered invalid and must be repeated on a newly collected sample. Lower bounds on the PMSD are also applied, such that test concentrations shall not be considered toxic (*i.e.*, significantly different from the control) if the relative difference from the control is less than the lower PMSD bound.

In the proposed rule, EPA solicited comment on the required use of upper and lower PMSD bounds in the calculation of NOEC and LOEC values.

According to the proposed approach, any test treatment with a percentage difference from the control (*i.e.*, [mean control response—mean treatment response]/ mean control response * 100) that is greater than the upper PMSD bound would be considered as significantly different; and any test treatment with a percentage difference from the control that is less than the lower PMSD bound would not be considered as significantly different.

EPA received comments on this proposed approach that expressed concern that variability criteria were used only to adjust NOEC and LOEC values and not to invalidate tests. Commenters argued that the proposed approach does not control variability unless tests failing to meet the variability criteria are invalidated. In response to these comments, EPA has modified the application of variability criteria in today's action. Rather than implementing variability criteria as a component of endpoint calculation, today's method modifications implement variability criteria (upper and lower PMSD bounds) as a test review step that is required when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing for the five test methods previously listed. Reviewed tests that fail to meet the variability criteria and do not detect toxicity at the receiving water concentration are invalid and must be repeated on a newly collected sample.

EPA received comments both for and against implementation of variability criteria as test acceptability criteria. To balance these comments, the final rule implements the variability criteria as a required test review step when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing for the five test methods previously listed. As such, the variability criteria have the potential to invalidate highly variable tests. Invalidation, however, is contingent upon other data evaluation steps. For instance, tests that exceed the variability criteria are only invalidated when the test also fails to detect toxicity at the permitted receiving water concentration. The method manuals continue to restrict use of the term ''test acceptability criteria'' to biological measurements in test controls (*i.e.*, control survival, reproduction, and growth) that independently assess test acceptability. Unlike the variability criteria instituted today, the use of ''test acceptability criteria'' to invalidate tests are not contingent on any other data evaluation steps. For this reason, the term ''test acceptability criteria'' is not applicable to the variability criteria established in today's action.

EPA received comments that recommended alternative measures for controlling within test variability, such as limits on the coefficient of variation (CV) for the control treatment. In developing variability criteria, EPA considered other measures of test precision, including the standard deviation and coefficients of variation for treatments and control, minimum significant difference (MSD), and the mean square for error from the analysis of variance of treatment effects. EPA considers the PMSD to be the measure that is most easily understood and that is most directly applied to determination of NOEC and LOEC values. The PMSD quantifies the smallest percentage difference between the control and a treatment (effluent dilution) that could be declared as statistically significant. It thus includes exactly that variability affecting determination of the NOEC and LOEC. The CV for the control or any one treatment, or selected treatments, represents only a portion of the variability affecting the NOEC and LOEC. Some State or Regional WET programs have requirements on the CV for the control and the treatment representing the receiving water concentration (RWC). Such requirements can provide finer control over the variability influencing a single comparison between the control and the RWC treatment. The PMSD upper bound provides control over the total within-test variability and is intended specifically for multi-concentration tests in which the NOEC or LOEC are determined by using hypothesis testing. Regulatory authorities may continue to use variability control strategies adopted within their jurisdiction, but when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing, the variability criteria required by today's action must be implemented as well. Requiring such variability criteria provides national consistency and control of WET test precision when hypothesis testing approaches are chosen. In today's action, EPA reiterates the recommendation of the method manuals and the TSD (USEPA, 1991) by stating that for the NPDES Permit Program, point estimation techniques are preferred over hypothesis testing approaches for calculating endpoints for effluent toxicity tests.

EPA received comments that the upper and lower bounds established for PMSD variability criteria were arbitrary or unrepresentative. EPA established the proposed variability criteria as performance-based standards set at the 10th and 90th percentiles of PMSD values from EPA's evaluation of national reference toxicant test data (USEPA, 2000c). In today's action, EPA has revised the variability criteria to reflect the 10th and 90th percentiles of PMSD values based on EPA's Interlaboratory Variability Study. The use of data from this study reflects not only tests performed on reference toxicants, but tests performed on effluents, receiving waters, and non-toxic ''blank'' samples as well. Data from this study also is representative of qualified laboratories that routinely conduct WET testing for permittees (see Section VI.C.2 of this preamble). In method development, EPA routinely uses such data from interlaboratory validation studies to set performance-based criteria.

In September 2001, EPA proposed variability criteria for four methods. Some commenters recommended that EPA expand the variability criteria to other test methods and other test endpoints. EPA did not propose variability criteria for the Selenastrum capricornutum Growth Test and the Sheepshead Minnow Larval Survival and Growth Test because these methods showed lower within-test variability in EPA's evaluation of national reference toxicant test data (USEPA, 2000c). EPA's WET Interlaboratory Variability Study confirmed that the Sheepshead Minnow Larval Survival and Growth Test was less variable than the methods for which EPA proposed variability criteria, however, the Selenastrum capricornutum Growth Test showed comparable within-test variability to methods for which EPA proposed variability criteria. For this reason, EPA is today requiring variability criteria for the Selenastrum capricornutum Growth Test in addition to the four methods for which variability criteria were proposed.

As previously stated in the method manuals (USEPA, 1993; USEPA, 1994a; USEPA, 1994b) and EPA's Technical Support Document (USEPA, 1991), EPA recommends the use of point estimation techniques over hypothesis testing approaches for calculating endpoints for effluent toxicity tests under the NPDES Permitting Program. EPA is instituting variability criteria to reduce within-test variability and to increase statistical sensitivity when test endpoints are expressed using hypothesis testing rather than the preferred point estimation techniques. For the five methods for which EPA is instituting variability criteria when test results are analyzed by hypothesis test methods, less than 90% of tests are able to detect

a 25% reduction in growth or reproduction (from the control treatment) as statistically significant using the hypothesis test. A 25% reduction in growth or reproduction is equivalent to the effect level measured using the preferred point estimation endpoint for chronic methods (*i.e.*, the IC25). Instituting variability criteria for these five chronic methods will improve the overall statistical sensitivity when using hypothesis testing and allow hypothesis testing approaches to achieve a level of statistical sensitivity that is more comparable to the preferred point estimation endpoint (IC25).

EPA is not requiring variability criteria for the Sheepshead Minnow Larval Survival and Growth Test, because the WET Interlaboratory Variability Study confirmed that this method is less variable than the five methods for which EPA is requiring variability criteria. In EPA's WET Interlaboratory Variability Study, all Sheepshead Minnow Larval Survival and Growth Tests were able to detect effects of 25% or less as statistically significant in hypothesis testing without instituting variability criteria. The 90th percentile PMSD for the Sheepshead Minnow Larval Survival and Growth Test was 17%, compared to 29%, 47%, 30%, 37%, and 28% for the five methods for which EPA is requiring variability criteria. For the chronic methods that were not evaluated in the WET Interlaboratory Variability Study, EPA does not have sufficient data to support the implementation of mandatory variability criteria at this time.

EPA is not requiring variability criteria for survival endpoints of acute methods because, in general, these methods are less variable than sublethal chronic test methods, and hypothesis testing approaches are able to achieve a level of statistical sensitivity similar to the preferred point estimation endpoint for acute methods and survival endpoints (*i.e.*, the LC50). The preferred point estimation endpoint for the analysis of survival in acute methods is the LC50, which represents an effect level of 50% mortality. Over 90% of acute tests in the WET Interlaboratory Variability Study were able to detect effects of 50% mortality or less as statistically significant in hypothesis testing without instituting variability criteria. The 90th percentile of PMSD values in the WET Interlaboratory Variability Study was 39% for the Fathead Minnow Acute Test, 25% for the Ceriodaphnia dubia Acute Test, 17% for the Sheepshead Minnow Acute Test, and 31% for the Inland Silverside Acute Test. Based on these measured PMSD values, well over 90% of acute tests should be able to detect effects at the LC50 as statistically significant without instituting variability criteria.

By requiring application of variability criteria today in five methods, EPA does not intend to discourage permitting authorities from applying variability criteria for other endpoints or methods, or from applying more stringent variability criteria for the five chronic methods subject to today's action. While EPA continues to recommend that permitting authorities apply variability criteria to additional methods as recommended in EPA guidance (USEPA, 2000c), today's rule does not require such variability criteria for additional methods or endpoints.

2. Minimum Number of Replicates

EPA solicited comment on increasing the minimum number of replicates in certain WET tests from three to four. Commenters were supportive of this proposed change and stated that this change was needed to support the use of non-parametric hypothesis tests as outlined in the method manuals. In today's action, EPA is increasing the minimum number of replicates as proposed.

3. Test Requirements/Recommendations

Several commenters on the proposed rule expressed concern that WET methods do not adequately differentiate between mandatory test conditions (*i.e.*, those required using the words ''must'' or ''shall'') and discretionary test conditions (*i.e.*, those recommended using the word ''should''). Commenters claimed that this situation causes difficulty in reviewing, validating, and certifying test results submitted under NPDES permits. To address this concern, EPA modified the WET methods to clearly distinguish between required and recommended test conditions for the purposes of reviewing WET test data submitted under NPDES permits. In today's action, EPA has modified the tables of test conditions and test acceptability criteria presented in the method manuals for each method, such that each test condition is identified as required or recommended. In addition, EPA has added to each method manual a section on test review. This section provides guidance on the review of sampling and handling procedures, test acceptability criteria, test conditions, statistical methods, concentration-response relationships, reference toxicant testing, and test variability. This section also establishes two new requirements for WET test review: mandatory review of concentration-response relationships and, for some methods, the mandatory variability criteria described earlier.

4. Sample Collection and Holding Times

In today's action, EPA has further clarified the requirements for sample collection and sample holding times. EPA made these modifications in response to comments requesting additional clarification and additional flexibility. In today's action, EPA has not modified the default maximum 36 hour sample holding time (up to 72 hours with regulatory authority approval), which must be met for first use of the sample, but EPA has provided additional clarification and additional flexibility for the use of samples for test renewals when the samples meet the initial sample holding times for first use. Sample holding times apply to ''first use of the sample,'' and samples may be used for renewal at 24, 48, and/or 72 hours after first use.

The method manuals also now provide additional flexibility when shipment of renewal samples is delayed during an ongoing test. If shipping problems (*e.g.*, unsuccessful Saturday delivery) are encountered with renewal samples after a test has been initiated, the permitting authority may allow the continued use of the most recently used sample for test renewal. EPA also clarified that sample collection on days one, three, and five is the recommended (not required) sample collection scheme. A minimum of three samples are required for seven-day chronic tests, but variations in the sampling scheme (*i.e.*, the days on which new samples are collected) also are allowed.

5. Reference Toxicant Testing

Today's action clarifies the purpose and requirements of reference toxicant testing and the appropriate use of reference toxicant test results. Several commenters identified inconsistencies in the requirements for reference toxicant testing and recommended that EPA clarify the purpose of generating reference toxicant test data. In today's action, EPA clarifies that reference toxicant testing is used to (1) initially demonstrate acceptable laboratory performance, (2) assess the sensitivity and health of test organisms, and (3) document ongoing laboratory performance. EPA has made method manual modifications consistent with this stated purpose. Regardless of the source of test organisms (in-house cultures or purchased from external suppliers), the testing laboratory must perform at least one acceptable reference toxicant test per month for each type of toxicity test method conducted in that month. If a test

method is conducted only monthly, or less frequently, a reference toxicant test must be performed concurrently with each effluent toxicity test. This requirement will document ongoing laboratory performance and assess organism sensitivity and consistency when organisms are cultured in-house. When organisms are obtained from external suppliers, concurrent reference toxicant tests must be performed with each effluent sample, unless the test organism supplier provides control chart data from at least the last five months of reference toxicant testing. This requirement assesses organism sensitivity and health when organisms are obtained from external vendors. To initially demonstrate acceptable laboratory performance, the method manuals require a laboratory to obtain consistent, precise results with reference toxicants before it performs toxicity tests with effluents under NPDES permits.

In today's action, EPA also clarifies the appropriate use of reference toxicant test results. Commenters recommended that EPA provide additional guidance on evaluating reference toxicant test results and using these results to validate toxicity tests on test samples of unknown toxicity. In response, EPA clarifies that reference toxicant test results should not be used as a *de facto* criterion for rejection of individual effluent or receiving water tests. Reference toxicant testing is used for evaluating the sensitivity and consistency of organisms over time and for documenting initial and ongoing laboratory performance. EPA clarified the steps to take when more than 1 in 20 reference toxicant tests falls outside of control chart limits, or when a reference toxicant test result falls ''well'' outside of control limits. Under these circumstances, the laboratory should investigate sources of variability, take corrective actions to reduce identified sources of variability, and perform an additional reference toxicant test during the same month.

In response to comments that reference toxicant testing only compares variability within a laboratory, EPA added guidance for evaluating test precision among laboratories and for limiting excessive variability in reference toxicant testing. EPA has recommended that laboratories compare the calculated coefficient of variation, also referred to as the CV (*i.e.*, standard deviation/mean), of the IC25 or LC50 for the 20 most recent data points to the distribution of laboratory CVs reported nationally for reference toxicant testing (USEPA, 2000c). If the calculated CV exceeds the 75th percentile of CVs reported nationally for LC50s or IC25s, the laboratory should use the 75th and 90th percentiles to calculate warning and control limits, respectively, and the laboratory should investigate options for reducing variability.

Several commenters recommended standardizing reference toxicants and acceptance ranges for reference toxicant test results. Other comments opposed mandatory reference toxicants and required acceptance ranges claiming that insufficient guidance and data are available for instituting such requirements and that such requirements would impose additional costs on laboratories. In today's action, EPA is not requiring the use of specific reference toxicants or setting required acceptance ranges for reference toxicant testing. EPA agrees that requiring specific reference toxicants and acceptance ranges would increase laboratory costs. Many laboratories would be forced to develop initial and ongoing documentation of laboratory performance (*e.g.*, reference toxicant control charts) using a new reference toxicant. For these laboratories, years of historic performance information using the original reference toxicant would be rendered useless. In addition, EPA believes that certain advantages gained by requiring reference toxicant acceptance ranges are already provided by method modifications instituted in today's action. For instance, today's action institutes variability criteria when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing. This method modification limits WET test variability, which would be one of the primary purposes of any standardized reference toxicant acceptance ranges.

6. Sample Holding Temperature

Today's action clarifies the allowable sample holding temperatures for WET samples as 0°–6°C. EPA received comments that the Agency should establish acceptable ranges for the current sampling holding temperature of 4°C. EPA has defined the acceptable range as 0°–6°C based on current NELAC (National Environmental Laboratory Accreditation Conference) standards which state that, ''for samples with a specified storage temperature of 4°C, storage at a temperature above the freezing point of water to 6°C shall be acceptable'' (NELAC, 2001). EPA also clarifies that hand-delivered samples used on the day of collection do not need to be cooled to 0°–6°C prior to test initiation.

7. Biomass

Today's action clarifies that the sublethal endpoint used in survival and growth tests is based on the number of initial organisms exposed. Comments expressed concern that by calculating the chronic endpoint based on the number of initial organisms (rather than surviving organisms), the growth endpoint was in error and biased. EPA disagrees. In the 1995 WET final rule, EPA changed the test endpoint from a growth endpoint that was based on the number of surviving organisms, to a combined growth and survival endpoint that is based on the number of initial organisms. This does not represent an error in the endpoint calculation, but rather a change in the endpoint itself. EPA made this change: (1) to provide consistency with other methods (*e.g.*, Ceriodaphnia dubia Survival and Reproduction Test) that incorporate survival along with sublethal effects, and (2) because the survival and growth endpoint is a more sensitive measure than the growth endpoint alone. While the 1995 WET final rule changed the test endpoint to a combined survival and growth endpoint, the method manuals continued to refer to the endpoint as a ''growth'' endpoint. Today's action clarifies that the endpoint is, in fact, a combined survival and growth endpoint that is more accurately termed biomass.

8. Total Residual Chlorine

Today's action clarifies the requirements for measuring total residual chlorine in WET test samples. Several commenters stated that certain requirements for measuring total residual chlorine were unnecessary when the absence of the chemical has already been determined. In response to these comments, EPA has clarified that if total residual chlorine is not detected in effluent or dilution water at test initiation, it is unnecessary to measure total residual chlorine at test solution renewal or at test termination. If total residual chlorine is detected at test initiation, then measurement of total residual chlorine at test solution renewal and test termination would continue to be required. EPA also has clarified that the measurement of total residual chlorine is unnecessary in laboratory prepared synthetic dilution water.

Commenters also recommended that EPA remove the requirement for the analysis of total residual chlorine immediately following sample collection. EPA has maintained this requirement in today's action, because information on chlorine at the site and

time of collection is important for evaluating the effectiveness of chlorination/dechlorination processes and comparing the results of WET testing with instream effects.

9. *Ceriodaphnia dubia* Survival and Reproduction Test Termination Criteria

Commenters recommended various modifications to the test termination criteria in the Ceriodaphnia dubia Survival and Reproduction Test. Some commenters recommended a strict seven-day test, and others recommended that the test last no longer than seven days. Other commenters recommended that the test be terminated when 80% of control females produce three broods, rather than the current criteria of 60%. Still other commenters recommended that fourth brood neonates not be counted. To evaluate the recommended approaches to terminating Ceriodaphnia dubia Survival and Reproduction Tests, EPA analyzed test data from the WET Interlaboratory Variability Study using each of the recommended test termination criteria. EPA compared the recommended criteria to the current criteria by calculating within-test variability and successful test completion rates under each of the test termination scenarios. While some of the recommended test termination criteria (such as termination when 80% of control females produce three broods or a maximum of seven days) slightly improved the within-test variability of the method (from a median PMSD of 23.2% to 19.9%), these criteria caused significant reductions in successful test completion (from 83% successful completion to 66%). Only the recommendation to exclude fourth brood neonates resulted in a decrease in within-test variability without an offsetting decrease in the rate of successful test completion. Based on these results, EPA is modifying the Ceriodaphnia dubia Survival and Reproduction Test to specify that neonates from fourth broods are excluded from the number of neonates counted in the test. With the exception of excluding fourth brood neonates, EPA is maintaining the current test termination criteria. These criteria state that the test is terminated when 60% or more of the surviving control females have produced their third brood, or at the end or eight days, whichever occurs first. These criteria may be met at six, seven, or eight days.

10. Additional Minor Corrections

Some commenters identified additional errors in the WET method manuals or the proposed changes that EPA was not aware of at the time of proposal. In today's action, EPA has made these additional corrections and minor clarifications.

C. Ratification and Withdrawal of Methods

In the September 28, 2001 proposal, EPA proposed to ratify the following eleven test methods evaluated in the WET Interlaboratory Variability Study: Ceriodaphnia dubia Acute Test; Fathead Minnow Acute Test; Sheepshead Minnow Acute Test; Inland Silverside Acute Test; Ceriodaphnia dubia Survival and Reproduction Test; Fathead Minnow Larval Survival and Growth Test; Selenastrum capricornutum Growth Test; Sheepshead Minnow Larval Survival and Growth Test; Inland Silverside Larval Survival and Growth Test; Mysidopsis bahia Survival, Growth, and Fecundity Test; and Champia parvula Reproduction Test. EPA proposed to withdraw the Holmesimysis costata Acute Test and, in its place, proposed a revised version of the method. As explained previously, EPA is ratifying ten of these methods today based on the results of EPA's WET Interlaboratory Variability Study that demonstrate the adequacy, availability, and comparability of the methods (*see* Section IV.C). For these ten methods, EPA generated sufficient interlaboratory validation data, and those data justify ratification. EPA's WET Interlaboratory Study evaluated interlaboratory precision, successful test completion rates, and false positive rates of the WET methods from the testing of over 700 samples in 56 laboratories. For each method ratified in today's action, EPA obtained interlaboratory data on four sample matrices from at least seven laboratories to as many as 35 laboratories.

Several commenters expressed concern that EPA did not properly validate WET test methods, specifically, the Champia parvula Reproduction Test and the Holmesimysis costata Acute Test. EPA was unable to obtain interlaboratory precision data for these methods in the WET Interlaboratory Variability Study. Because these WET methods are not used widely in NPDES permits, EPA was unable to contract with a minimum of six laboratories qualified and willing to conduct these test methods within the time frame of the Study. In the proposed rule, EPA supported these methods with intralaboratory precision data and limited interlaboratory precision data (two trials of the Holmesimysis costata Acute Test in two laboratories), but commenters questioned the sufficiency of such data for validating methods for nationwide use, as well as the necessity to approve such methods for nationwide use.

EPA has reviewed its proposal to ratify the Champia parvula Reproduction Test in light of comments received and has decided to withdraw the method from the list of nationally-approved test methods at 40 CFR part 136. At the current time, an insufficient number of laboratories nationwide have the capabilities to perform the method. As noted, EPA was thus unable to obtain a rigorous multi-laboratory performance data set to comprehensively evaluate this method. EPA had predicted that as the requirements for use of this organism in the NPDES permit program increased, the resulting increase in market demand would result in an increase in the number of laboratories capable of performing the test. However, the number of permits requiring the Champia parvula chronic test has remained low (DeGraeve *et al.*, 1998), so few laboratories have invested in developing Champia parvula cultures or standard operating procedures for the method. While today's action removes the Champia parvula chronic test method from the 40 CFR part 136 listing, EPA retains the standardized method in the marine chronic method manual with an explanation that the method is not listed at 40 CFR part 136 for nationwide use. Accordingly, retention of the method in the method manual continues to enable standardization of the method for developmental and other non-regulatory purposes and may foster laboratories to maintain or even develop expertise in performing the method.

EPA also has reviewed its proposal of the Holmesimysis costata Acute Test in light of comments received. As proposed, EPA now withdraws Holmesimysis costata as an acceptable species for use in the Mysidopsis bahia Acute Test method. EPA does not, however, promulgate the proposed Holmesimysis costata Acute Test method as a nationally-approved method at 40 CFR part 136 at this time. Because the Holmesimysis costata Acute Test is used in only a small number of permits on the West Coast, EPA was unable to obtain sufficient interlaboratory data on this method during the time that the WET Interlaboratory Variability Study was conducted to support today's rulemaking. While today's action removes the Homesimysis costata Acute Test from the 40 CFR part 136 listing, EPA includes the proposed method in the method manual with an explanation

that the method has not yet been approved at 40 CFR part 136 for nationwide use.

Three commenters, including the California State Water Resources Control Board, supported ratification of the Holmesimysis costata Acute Test method. The California State Water Resources Control Board added that ratification of this method was ''particularly important, as it is the only method employing a marine species that is indigenous to the Pacific coast.'' The California State Water Resources Control Board has been proactive in developing, testing, validating, and implementing WET test methods specific to West Coast species (USEPA, 1995b), and EPA does not intend to frustrate that effort by today's action. For this reason, EPA is specifying in Table IA of 40 CFR part 136 that the marine acute and marine chronic test methods ratified in today's rulemaking measure toxicity to estuarine and marine organisms ''of the Atlantic Ocean and Gulf of Mexico.'' By defining the parameter measured by promulgated marine methods as toxicity to organisms ''of the Atlantic Ocean and Gulf of Mexico,'' today's action does not displace West Coast methods that have been approved for use in States such as California. Because test procedures for measuring toxicity to estuarine and marine organisms of the Pacific Ocean are not listed at 40 CFR part 136, permit writers may include (under 40 CFR 122.41(j)(4) and 122.44(i)(1)(iv)) requirements for the use of test procedures that are not approved at part 136, such as West Coast WET methods (USEPA, 1995b) on a permit-by-permit basis. Furthermore, this rule does not preclude permit writers addressing marine or estuarine waters of the Pacific Ocean from requiring, on a permit-by-permit basis, any method designated as approved for ''estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico,'' where such method is suitable for the specific application.

VI. Response to Major Comments

EPA encouraged public participation in this rulemaking and requested comments on the proposed revision and ratification of WET methods. EPA also requested data supporting comments, if available. Thirty-eight stakeholders provided comments on the proposal. Stakeholders included eight laboratories, eight regulatory authorities, 11 industries/industry groups, nine publicly-owned treatment works (POTWs), and two environmental consulting companies.

This section summarizes major comments received on the proposed rule that were not previously addressed in Section V and provides a summary of EPA's responses. The complete comment summary and response document can be found in the public record for this final rule.

A. Proposed WET Method Changes

EPA received comments on each of the proposed method changes, and those comments that prompted modifications to the proposed method changes are discussed in pection V of this preamble. Other substantial comments on proposed method changes follow.

1. Cost

Several commenters expressed concern that proposed method modifications will increase test costs. Of the WET method modifications instituted in today's action, only four are additional mandatory changes that have the potential to increase test costs. These four modifications include: (1) The requirement for blocking by known parentage in the Ceriodaphnia dubia Survival and Reproduction Test; (2) the requirement to review test results for concentration-response relationships; (3) the incorporation of mandatory variability criteria for certain test methods when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing; and (4) the increase in the minimum number of replicates for the Fathead Minnow Larval Survival and Growth Test, Selenastrum capricornutum Growth Test, Sheepshead Minnow Larval Survival and Growth Test, Inland Silverside Larval Survival and Growth Test, and Sea Urchin Fertilization Test. EPA believes that the overall cost increases due to these changes will be minor and that the potential benefits of these modifications outweigh the incremental costs. EPA has estimated that the total cost of these modifications for all permittees will be less than five million dollars per year nationwide for all tests (Table 2 and USEPA, 2002). EPA believes that these costs also would be alleviated by a potential reduction in costs for retesting and additional investigations (*e.g.*, toxicity identification evaluations). The modifications should result in improved test performance and increased confidence in the reliability of testing results.

TABLE 2.—ESTIMATED TOTAL COST RESULTING FROM WET METHOD MODIFICATIONS REQUIRED BY TODAY'S ACTION (FROM USEPA, 2002)

Modification	Cost ($/yr)
Blocking-by-parentage	$352,592
Concentration-response relationship	98,069
Increased replicates	886,634
Variability criteria	2,595,873
Total	3,933,168

2. Concentration-Response Relationships

Today, EPA is finalizing proposed method modifications to require the review of concentration-response relationships for all multi-concentration tests. Under this requirement, the concentration-response relationship generated for each multi-concentration test must be reviewed to ensure that calculated test results are interpreted appropriately. In conjunction with this requirement, EPA has provided recommended guidance for concentration-response relationship review (USEPA, 2000a).

Several commenters expressed concern that the proposed method modifications require that the concentration-response relationship be reviewed but does not require that a concentration-response relationship be established before determining that toxicity is present. Commenters recommended that EPA require the establishment of a ''valid'' concentration-response relationship prior to determining toxicity. Though within the scope of the proposed rule, EPA does not consider such a requirement appropriate for several reasons. First, WET methods and the WET testing program rely on the measurement of specific test endpoints (NOECs, LC50s, IC25s) for determining toxicity, not on achievement of specified concentration-response patterns. Second, the concentration-response guidance is a component of test review that ensures that test endpoints, which are used to determine toxicity, are calculated and interpreted appropriately. Second, concentration-response relationships are empirical; and a single definition for a ''valid'' concentration-response relationship is not appropriate. A range of toxicants may produce an infinite range of different shaped responses. In addition, a single response pattern may be due to several different reasons, some indicating toxicity, and some not. For example, the presence of pathogens,

considered an adverse effect confounding WET tests, may produce the same concentration-response pattern as a true toxicant. For this reason, EPA designed the guidance as a step-by-step review process that investigates the causes for non-ideal concentration-response patterns and provides for proper interpretation of test endpoints. Third, WET testing has inherent characteristics that may limit the ability to achieve ideal concentration-response relationships. For instance, WET testing is constrained to 100% effluent sample as the highest test concentration. This sometimes inhibits the ability to establish an ideal concentration-response relationship that extends gradually from no effect at one concentration to complete effect at some higher concentration. Traditional toxicology on pure substances, from which the concentration-response relationship concept is borrowed, is not similarly constrained. Test concentrations can be increased or lowered until an ideal response is generated. The typical WET test design of five concentrations and a control also may limit the ability to generate ideal concentration-response relationships. The location or spacing of these five concentrations may miss the gradual transition from no effect to complete effects. In traditional toxicology using pure substances, tests can be rerun with altered or additional test concentrations of the same compound, but in WET testing each individual sample and test is unique and cannot be exactly duplicated due to the complex and dynamic nature of the test samples over time. Non-ideal concentration-response relationships will occasionally be encountered in WET testing, and the goal of concentration-response relationship review is to properly interpret these non-ideal patterns.

Fourth, the concentration-response relationship guidance has been shown to be very effective at reducing false positives. For instance, in the WET Interlaboratory Variability Study, the use of the concentration-response relationship guidance reduced false positive incidences from above 14% to below 5% for some methods (USEPA, 2001a).

3. Confidence Intervals

EPA is finalizing the proposed method modifications that provide guidance when confidence intervals are not generated. This guidance clarifies that confidence intervals may not be generated by EPA software when test data do not meet specific assumptions required by the statistical methods, when point estimates are outside of the test concentration range, or when specific limitations imposed by the software are encountered. EPA also provides guidance for proceeding under each circumstance. Some commenters stressed the importance of obtaining confidence intervals in all circumstances and recommended that EPA use confidence intervals in assessing the reliability of results and determining compliance. EPA believes that the failure to generate confidence intervals should not adversely affect WET test result reporting because confidence intervals surrounding point estimates are not currently reported in the Permit Compliance System (the national database tracking compliance with NPDES permits) or used in compliance determinations. Compliance with permit requirements is based on the point estimate itself and not confidence intervals surrounding the estimate. This approach is no different in WET testing than in chemical testing, where compliance is also based on the analytical result itself. EPA demonstrated in the WET Interlaboratory Variability Study that the WET methods provide adequate precision and adequate protection from false positives. Therefore, EPA is not altering the compliance determination approach to include the use of confidence intervals.

B. Additional Revisions to WET Test Methods

In addition to receiving comment on proposed method modifications, EPA received comments recommending additional method modifications. Those recommendations that EPA incorporated in today's action and those comments that prompted additional modifications are discussed in section V of this preamble. Other substantial comments on additional method changes are discussed below.

1. Method Flexibility

EPA received comments that requested additional requirements be added to WET test methods, as well as comments that WET test methods are overly restrictive and would benefit from additional flexibility. As with all promulgated methods, EPA has attempted to balance these two opposing objectives. EPA has prescribed certain method elements when necessary to ensure the reliability of results, and allowed flexibility in other method elements so that the performance of analytical methods can be optimized. As noted in section V.B.3, EPA reevaluated the use of mandatory and discretionary terms in the WET test methods to ensure that the terms are included in the manuals as intended.

EPA received comments that WET test methods do not adequately distinguish between required and recommended procedures. In response, EPA modified the tables of test conditions and test acceptability criteria presented in the method manuals for each method, such that each item is identified as required or recommended. In addition, EPA added to each method manual a section on test review. This section provides direction on the review of sampling and handling procedures, test acceptability criteria, test conditions, statistical methods, concentration-response relationships, reference toxicant testing, and test variability.

EPA believes that these method modifications clarify the requirements for acceptable WET test results submitted under NPDES permits. However, EPA acknowledges that these method modifications will not solve all commenters concerns regarding inconsistencies in WET test review and acceptance. In the WET test methods, EPA established the minimum requirements for acceptable WET tests. In some cases, NPDES permits incorporate recommendations from the WET test method manuals as requirements in the permit (on a permit-by-permit basis). Authorized States retain the authority to establish more stringent requirements or to require additional procedures, test conditions, or QC elements. Thus, WET requirements ultimately reflected as NPDES permit requirements may continue to differ among States.

2. Test Acceptability Criteria

In the proposed rule, EPA solicited comments on increasing the test acceptability criteria for mean control reproduction in the Ceriodaphnia dubia Survival and Reproduction Test and mean control weight in the Fathead Minnow Larval Survival and Growth Test. EPA also requested that commenters submit supporting data. EPA received comments both in favor of and opposed to increasing test acceptability criteria for these methods, but these comments were not accompanied by supporting data. Because EPA does not currently possess and did not receive data indicating that such changes would improve the performance of the methods, EPA is not modifying the survival, growth and reproduction test acceptability criteria for these methods in today's action.

EPA also received comments recommending the Agency establish requirements for additional test acceptability criteria, such as limits on

control variability. Today's action does establish mandatory variability criteria when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing. EPA has incorporated these variability criteria as a required test review step for five methods rather than as test acceptability criteria, meaning that, depending on the reviewed result, retesting may be necessary. EPA continues to use the term ''test acceptability criteria'' only to refer to the evaluation of biological measurements in test controls (*i.e.*, control survival, reproduction, and growth).

3. Quality Assurance/Quality Control Requirements

Some commenters expressed concern that WET test methods do not contain adequate quality assurance/quality control (QA/QC) requirements. Each of the toxicity test method manuals contains separate, detailed, QA/QC guidelines, and each analytical method within these manuals discusses all aspects of the tests which are related to QA/QC. Section 4 of each method manual provides QA/QC requirements and guidance for facilities, equipment, and test chambers; test organisms; culturing and test dilution water; effluent and receiving water sampling and handling; test conditions; food quality; test acceptability criteria; calibration and standardization; replication and test sensitivity; demonstrating acceptable laboratory performance; documenting ongoing laboratory performance; and record keeping. The primary QA/QC requirements of WET test methods, as contained in section 4 of the method manuals, remain the requirements for acceptable biological performance (survival, reproduction, and growth) in test controls and the requirement for the routine analysis of reference toxicants. In today's action, however, EPA added additional QA/QC requirements including the required review of concentration-response relationships and mandatory variability criteria when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing. EPA believes that the QA/QC requirements of WET tests will adequately ensure that results are reliable and of known and acceptable quality.

4. Statistical Methods

Several commenters recommended that EPA approve and use alternative statistical methods (such as percent effect approaches and Generalized Linear Models). EPA has not included such alternative statistical methods in today's modifications to WET test methods. EPA believes that the statistical methods currently recommended in the WET methods are appropriate, and acknowledges that these recommended statistical methods are not the only appropriate techniques. The method manuals state that, ''the statistical methods recommended in this manual are not the only possible methods of statistical analysis.'' The recommended statistical methods described in the method manuals were selected because they are ''(1) applicable to most of the different toxicity test data sets for which they are recommended, (2) powerful statistical tests, (3) hopefully ''easily'' understood by nonstatisticians, and (4) amenable to use without a computer, if necessary'' (*see* subsection 9.4.1.2 of USEPA, 1994a).

Several commenters also expressed concern over bias introduced by the smoothing technique that is used in the recommended Inhibition Concentration Procedure (ICp). EPA has acknowledged in the method manuals and in method guidance (USEPA, 2000a) that the smoothing process may result in an upward adjustment in the control mean. EPA has provided guidance on concentration-response relationship review that corrects anomalous results that may arise from this smoothing procedure (USEPA, 2000a). This guidance warns that results from point estimation techniques should be interpreted carefully when the response pattern includes stimulation at low concentrations and no significant effect at higher concentrations. Under these conditions, the smoothing process could result in anomalous results, so EPA guidance recommends evaluating the ICp calculation without smoothing in these cases. If the percent effect at the receiving water concentration (RWC) is less than 25% when calculated without smoothing, and the response at the RWC is not statistically significantly different from the control response, then a calculated IC25 of less than the RWC should be noted as anomalous and the effluent determined to be non-toxic at the RWC.

C. Ratification and Withdrawal of Methods

1. Validation of Performance Characteristics

Several commenters stated that EPA did not properly validate WET test methods because it did not evaluate essential performance characteristics. Commenters referenced EPA's Report to Congress on the Availability, Adequacy, and Comparability of Testing Procedures (USEPA, 1988) and stated that EPA failed to validate the following performance characteristics required by this report: accuracy, precision, dynamic range, detection limits, interferences, ruggedness (applicability), reporting, and representativeness/method comparability. EPA disagrees with this assertion and maintains that the WET test methods ratified in today's action were adequately validated according to all of the applicable criteria identified in the 1988 Report to Congress.

The list of performance characteristics cited by the commenters is provided in the 1988 Report to Congress within the context of chemical methods, and several of these characteristics are not applicable to biological test methods such as the WET methods that EPA is ratifying today. The 1988 Report to Congress specifically notes that not all such criteria apply to biological testing. The Report explains that the generation of scientifically accurate and valid biological measurements for environmental pollutants requires approximately the same criteria for assessing the adequacy of a method as previously described for chemical analyses, however, there are several differences which are important. Detection limits and dynamic range are specifically listed as characteristics that ''are not usually appropriate concepts for all biological measurements unless instrumentation is required.'' Because some performance characteristics listed in the 1988 Report to Congress for chemical methods are not applicable to biological test methods, EPA did not (and, in fact, could not) evaluate those inapplicable performance characteristics for WET test method validation.

In ratifying the previously approved WET test methods, EPA applied the availability, adequacy, and comparability criteria identified in the Report as relevant to biological measurements. The WET test methods ratified today are ''available'' because EPA has identified a sufficient number of laboratories that can conduct the test and culture the test organisms. The ratified WET test methods are ''adequate'' because the multi-laboratory tests (as well as aggregation of single laboratory tests) demonstrate high degrees of precision; the tests are reproducible. In addition, the manuals identify interferences and ways to control interference. Finally, the test acceptability criteria for control performance and requirements for reference toxicant testing provide sufficient standards to ensure data integrity, absent the ''calibration'' procedures available with non-living analytical instrumentation.

The Report specifically identified detection limits and dynamic range as performance characteristics that are usually not applicable to biological measurements, and the 1988 conclusions remain true today. In addition, accuracy is a performance characteristic that is not completely applicable to WET testing. Accuracy as a performance characteristic of a measurement system describes the closeness of measured results to a known result. Chemical methods generally measure some surrogate property (*e.g.*, absorption of light at a particular wavelength) of an analyte (*e.g.*, copper) to determine the concentration of that analyte. To confirm that the surrogate measure accurately represents the true concentration of the analyte, the pure analyte can be weighed, diluted to a known concentration, and measured using the analytical procedure under study. This procedure cannot be conducted for whole effluent toxicity. Toxicity cannot be purified, weighed, or diluted to a known concentration of ''toxicity.'' Toxicity is only defined by its effects on organisms, and it is these effects that are directly measured in the toxicity test. Because toxicity is inherently defined by the measurement system (a ''method-defined analyte''), and toxicity cannot be independently measured apart from a toxicity test, accuracy as a performance characteristic is not completely applicable. The inapplicability of the accuracy performance characteristic does not mean that WET tests are not accurate or that permittees are incapable of certifying the accuracy of WET test results reported on discharge monitoring reports. It means simply that the procedures commonly used in analytical testing to measure the performance characteristic that is termed ''accuracy'' cannot be applied to WET test methods.

Notwithstanding the previous explanation, one component of accuracy can be described for WET tests. The American Society for Testing and Materials (ASTM) defines accuracy as ''a measure of the degree of conformity of a single test result generated by a specific procedure to the assumed or accepted true value and *includes both precision and bias*'' (ASTM, 1998; emphasis added). Bias is defined as ''the persistent positive or negative deviation of the average value of a test method from the assumed or accepted true value'' (ASTM, 1998). Precision is defined as ''the degree of agreement of repeated measurements of the same property, expressed in terms of dispersion of test results about the arithmetical mean result obtained by repetitive testing of a homogeneous sample under specified conditions' (ASTM, 1998). Like ASTM, the 1988 Report to Congress (USEPA, 1988) also explains that accuracy includes both bias and precision. As explained previously, EPA conducted an Interlaboratory Variability Study of the ratified methods in order to, among other things, generate a quantified estimate of the precision for each method studied. WET tests are therefore amenable to the precision portion of accuracy. It is the bias portion of accuracy that is not applicable to WET test methods and cannot be described for WET as it is described for chemical analytes.

The additional performance characteristics listed in the 1988 Report to Congress, namely precision, interferences, ruggedness (applicability), reporting, and representativeness, are applicable to biological test methods, and EPA evaluated and considered these characteristics in ratifying the WET test methods. To establish the precision of the methods, EPA conducted an Interlaboratory Variability Study for each of the WET methods ratified today. From the Study, EPA established single-laboratory and multi-laboratory precision estimates for multiple sample matrices for each method (USEPA, 2001a; USEPA, 2001b). EPA also conducted a study of within laboratory precision measured when testing reference toxicants (USEPA, 2000c). In today's action, EPA is modifying the WET method manuals to include this new and updated single-laboratory and multi-laboratory precision data for each method. Precision data from the WET Interlaboratory Variability Study confirmed that the WET test methods provided adequate precision (CVs ranged from 10.5 to 43.8%). The measured precision ranges for the ratified toxicity tests demonstrate the tests are comparable to (no more variable than) chemical analytical methods approved at 40 CFR part 136. Finally, the precision had improved since the time the methods were promulgated in 1995, thus confirming EPA's conclusions that precision would improve with time, *i.e.*, as analysts developed more expertise the methods would be ''validated by use.''

In addition to precision, EPA evaluated and considered the performance characteristic of interferences. Each WET test method contains a section describing possible test interferences. In today's action, EPA has expanded that section to address two additional interference concerns that were raised by stakeholders by including guidance for controlling test interference that could be due to pH drift in the test and interference caused by pathogens.

EPA also evaluated and considered the performance characteristic of ruggedness or applicability. The methods ratified today use materials that are widely available and organisms that can be easily cultured in the laboratory. By conducting a national interlaboratory study of these methods, EPA also confirmed that the methods are adaptable to a wide variety of laboratories and that the methods generate reproducible results in those laboratories. In the WET Interlaboratory Variability Study, EPA documented successful test completion rates of 63.6% to 100% for WET methods. EPA anticipates that method modifications instituted today will improve the successful test completion rate for methods at the bottom of this range, such as the Selenastrum capricornutum Growth Test. Today, EPA is requiring the use of EDTA in this test. As laboratories gain experience in performing the test with EDTA, EPA anticipates that successful test completion rates will improve. See section VI.C.4 of this preamble.

EPA also considered the aspect of result reporting in its development and validation of WET test methods. Each method manual contains a section devoted to test review and reporting. In today's action, EPA has supplemented this section by providing guidance on the review of sampling and handling, test acceptability criteria, test conditions, statistical methods, concentration-response relationships, reference toxicant testing, and test variability. In addition, EPA clarified the required and recommended test conditions when submitting data under NPDES permits.

EPA documented and considered the representativeness or comparability of WET methods. Prior to approving the WET test methods in the 1995 WET final rule, EPA conducted several studies that demonstrated the ability of WET tests to predict impacts of effluents on the biological integrity of receiving waters (USEPA, 1991). In a 1995 workshop of nationally recognized WET experts (the Society of Environmental Toxicology and Chemistry's Pellston Workshop), including those from academia, government, and the regulated community (*e.g.*, POTWs and industry), the experts concluded that ''WET testing is an effective tool for predicting receiving system impacts when appropriate considerations of

exposure are considered'' (Waller *et al.*, 1996). The workgroup also agreed that ''further laboratory-to-field validation is not essential for the continued use of WET testing'' (Waller *et al.*, 1996).

2. Interlaboratory Variability Study

Several commenters expressed concern that EPA used data from the Interlaboratory Variability Study that was of poor quality and would have been discarded in a regulatory context. In conducting the WET Interlaboratory Variability Study, EPA's objective was to validate the WET methods as promulgated. EPA was not attempting to validate the diversity of testing requirements that may be implemented in various States. State regulatory authorities retain the discretion to enhance the requirements of a method for implementation in their State as well as to require procedures that EPA otherwise recommends. In the WET Interlaboratory Variability Study, EPA appropriately evaluated data according to the promulgated methods and ASTM guidance for measuring interlaboratory method precision. EPA accurately invalidated tests according to test acceptability criteria specified in each method. EPA acknowledges that the promulgated methods allow flexibility in the review of test conditions. The method manuals state that departures in specified test condition ranges do not necessarily invalidate test results. In today's action EPA modified the methods to better clarify this allowable flexibility. For the purposes of reviewing data submitted under NPDES permits, the manuals now clearly distinguish between requirements of the method and recommended test condition ranges.

Several commenters expressed concern that EPA did not use the results of reference toxicant tests from the WET Interlaboratory Variability Study to qualify or disqualify data. EPA agrees. EPA used reference toxicant tests in the manner in which they are described in the method manuals. Failure of reference toxicant tests do not necessarily invalidate a test. In today's action, EPA has incorporated method modifications to clarify reference toxicant testing requirements and the appropriate use of reference toxicant test data. EPA has clarified that reference toxicant test results should not be used as a de facto criterion for rejection of individual effluent or receiving water tests, but rather, reference toxicant testing is used for evaluating the health and sensitivity of organisms over time and for documenting initial and ongoing laboratory performance.

Several commenters expressed concern that too few data points were used to estimate method performance in the WET Interlaboratory Variability Study. In accordance with ASTM guidance on determining interlaboratory method precision, EPA set a data quality objective of a minimum of six complete and useable data sets for each WET test method evaluated in the Study. To meet this data quality objective, EPA endeavored to sponsor a minimum of nine laboratories per method. For all of the methods that EPA is ratifying today, seven or more laboratories participated in interlaboratory testing. For several individual sample matrices and test method combinations that were tested (blank sample analyzed using the Selenastrum capricornutum Growth Test, receiving water sample analyzed using the Selenastrum capricornutum Growth Test without EDTA, and the receiving water sample analyzed using the Inland Silverside Acute Test), fewer than six useable data sets were obtained. EPA did not, however, establish precision criteria in today's rule based on results from a single sample matrix. EPA tested four sample matrices (blank, reference toxicant, effluent, and receiving water) with each test method, and precision estimates were based on the combined results of reference toxicant, effluent and receiving water testing. Because multiple sample matrices were used to generate precision estimates, more than six useable data sets were used for each method. In fact, at least 17 data sets were used to establish precision estimates for each method.

Several commenters also expressed concern that the selection of laboratories for the WET Interlaboratory Variability Study was biased. EPA disagrees. EPA believes that the laboratories that participated in the WET Interlaboratory Variability Study were representative of the laboratory community that commonly conducts WET testing for permittees. From the outset, EPA and the regulated community wanted to ensure that participants in the Study were representative. Industry trade groups, such as AMSA (Association of Metropolitan Sewerage Agencies), surveyed their member permittees to identify the laboratories that provide their routine WET testing services. AMSA requested that members sponsor those laboratories' participation in the Study. Of the 55 participant laboratories involved in the Study, 44 (or 80%) were specifically recommended by AMSA with commitments from AMSA members to sponsor such laboratories' participation in the Study. Thirty-seven of these laboratories were ultimately sponsored by AMSA members to analyze samples using one or more methods. The remaining seven laboratories had commitments of sponsorship from AMSA members, but were ultimately sponsored by EPA in the Study because their bids were among the nine lowest. The high percentage (80%) of laboratories in the Study that were sponsored by permittees for participation demonstrates that the laboratories involved in the Study are representative of those that commonly conduct WET testing for permittees.

Several commenters expressed concern that a majority of laboratories did not detect toxicity in the reference toxicant sample type distributed for the Ceriodaphnia dubia Survival and Reproduction Test method. Prior to interlaboratory testing in the WET Interlaboratory Variability Study, referee laboratories conducted preliminary testing to determine the appropriate composition of samples to prepare for the Study. This preliminary testing was important for ensuring that test samples prepared for the Study produced results within the test concentration range. Despite these preliminary testing efforts, the spiking level selected for the reference toxicant sample type in the Ceriodaphnia dubia Survival and Reproduction Test method was insufficient to produce the targeted level of effect. The spiking concentration of KCl for this sample was selected to achieve an IC25 of approximately 50% sample based on preliminary testing, but the spiked sample missed this targeted effect level. The prepared sample was only slightly toxic and could not be detected as toxic in 67% of tests. Depending on the sensitivity of test organisms at individual laboratories, some laboratories identified the sample as toxic, while other laboratories did not. Similarly, marginally toxic effluents may exhibit intermittent toxicity in routine monitoring. In such cases, permittees and regulatory authorities should consult EPA guidance that addresses marginal and intermittent toxicity (USEPA, 1991; USEPA, 2000c; USEPA, 2001f).

The reference toxicant sample used in the Study also was prepared as an ampule that was reconstituted at each participant laboratory. This reconstitution process also likely produced minor variations (from laboratory to laboratory) in the final sample composition that influenced whether toxicity was detected. While the concentration of potassium ions was not measured in each final reconstituted

sample, conductivity was measured and can be used as an approximate surrogate measure. In samples that showed toxicity, the average conductivity was 873 µmhos, and in samples that did not show toxicity, the average conductivity was 797 µmhos. The differences in conductivity between tests that indicated toxicity and tests that did not were statistically significantly different (at the alpha = 0.05 level). This finding indicates that those samples which were less diluted in the reconstitution process, were also more likely to be toxic.

Several commenters also expressed concern over the way EPA handled outlier data points in the WET Interlaboratory Variability Study. EPA believes that outliers were treated according to standard practice and according to ASTM standards for measuring method precision. EPA identified outliers using ASTM's h and k statistics, and discarded outliers only when a probable cause for the outlier was identified. In all, only eight tests in the entire study of 698 tests were excluded based on outlier analysis.

3. Variability

Several commenters stated that the variability of the WET methods (measured in terms of CV) is too high for use in NPDES permits. Commenters also recommended that specific steps be taken to account for variability in the permit limit derivation and compliance determination process. EPA believes that the WET Interlaboratory Variability Study accurately estimated the precision of WET test methods, and that this precision is adequate for regulatory use of the WET methods. The precision measured for the WET test methods is comparable to that of chemical methods. While EPA agrees with commenters that WET test methods cannot be compared in all aspects to chemical methods, the comparison of interlaboratory precision values does demonstrate that WET test methods are no more variable than other methods approved at 40 CFR part 136 and used for regulatory compliance purposes.

In a recent peer-reviewed guidance document (USEPA, 2000c), EPA thoroughly evaluated the issue of WET test method variability and accounting for such variability in NPDES applications. The document concluded that ''comparisons of WET method precision with method precision for analytes commonly limited in NPDES permits clearly demonstrate that the variability of the promulgated WET methods is within the range of variability experienced in other types of [required regulatory] analyses.'' The analytical variability of WET test methods is accounted for appropriately in the development of permit limits derived according to EPA's Technical Support Document (TSD) (USEPA, 1991). The TSD approach accounts for both effluent variability and method variability. The TSD statistical approach to determination of reasonable potential and permit limit derivation considers combined effluent and analytical variability through the CV of measured effluent values. Because the determination of effluent variability is based on empirical measurements, the variability estimated for effluent measurements includes the variability of pollutant levels, sampling variability, and a smaller component owed to method variability.

EPA does not recommend additional approaches or factors to account for variability, because the TSD approach appropriately accounts for method variability in the permit derivation process. In the guidance document, EPA evaluated additional approaches to account for variability in the permit derivation process and concluded that such approaches would not ensure adequate protection of water quality. The TSD approach was designed to provide a reasonable degree of protection for water quality as well as from effluent and analytical variability. Alternative approaches would undermine these objectives.

Some commenters expressed specific concern that the Selenastrum capricornutum Growth Test method was too variable. EPA believes that the variability of the Selenastrum capricornutum Growth Test method, as measured in the WET Interlaboratory Variability Study (USEPA, 2001a) and variability guidance document (USEPA, 2000c), is acceptable for the intended regulatory use of the methods. EPA observed in the WET Interlaboratory Variability Study that the variability of the Selenastrum capricornutum Growth Test method was lower when the method was conducted with the addition of EDTA. In today's action, EPA is removing the option to conduct the test without the addition of EDTA when data is submitted under NPDES permits. EPA believes that this modification will improve the overall performance of the test method. False positive rates decreased from 33.3% to 0.00% and interlaboratory variability decreased from 58.5% to 34.3% when EDTA was added. EPA cautions, however, that the required addition of EDTA may make the Selenastrum capricornutum Growth Test less sensitive, thus less useful, for measuring the toxicity of some test samples, specifically, samples that contain toxic levels of metals.

4. Successful Test Completion Rate

Some commenters stated that EPA incorrectly calculated successful test completion rates in the WET Interlaboratory Variability Study by failing to invalidate tests that did not meet specific test condition ranges. As previously discussed (see section VI.C.2 of this preamble), EPA accurately invalidated tests according to the test acceptability criteria specific to each method, and successful test completion rates were based on meeting these criteria. EPA acknowledges that the promulgated methods allow flexibility in the review of test conditions. The method manuals state that departures in specified test condition ranges do not necessarily invalidate test results. In today's action EPA has modified the methods to better clarify this allowable flexibility. For the purposes of reviewing data submitted under NPDES permits, the manuals now clearly distinguish between requirements of the method and recommended test condition ranges.

Several commenters stated that the successful test completion rate measured for the Ceriodaphnia dubia Survival and Reproduction Test method was unacceptable and indicates a lack of ruggedness. EPA believes that the successful test completion rate observed for the Ceriodaphnia dubia Survival and Reproduction Test method in the WET Interlaboratory Variability Study was artificially suppressed by very poor performance in a small subset of laboratories. Only ten of the 34 participant laboratories performed invalid tests, but eight of these laboratories performed invalid tests on 50% or more of the samples tested. The low rate of successful test completion in these eight laboratories may have been influenced by the Study's strict testing schedule, which required that each test be conducted on a given day and that all tests be conducted within a 15-day time period. When invalid tests conducted in a given laboratory were likely due to marginal or poor health of the test organism cultures, then it was logical that the laboratory would fail a high percentage of tests during the Study because culture health was unlikely to fully recover within 15 days. EPA believes that measuring an individual laboratory's rate of successful test completion over a 15-day period may not be representative of that laboratory's overall successful test completion rate. For instance, several laboratories had successful test completion rates of 0% during the WET

Interlaboratory Variability Study. Obviously, this result is not indicative of the laboratory's overall successful test completion rate. If so, the laboratory would not be in business or would not have been able to prequalify for participation in the Study. EPA believes that successful test completion rates for this method are higher in routine use because testing laboratories are allowed flexibility in the timing of sample collection and can avoid initiating tests during periods of marginal to poor culture health.

Some commenters expressed concern that the successful test completion rate for the Selenastrum capricornutum Growth Test method was too low. In today's action, EPA is removing the option to conduct the test without the addition of EDTA. EPA believes that this modification will improve successful test completion rates for the method as laboratories consistently culture and test with EDTA. The successful test completion rate of 63.6% (when conducted with EDTA) was in part due to laboratory inexperience in using both the with and without-EDTA techniques. For example, two laboratories that cultured organisms without EDTA and generally conducted tests without EDTA showed poor successful test completion rates (failing eight of eight tests) when EDTA was used. These laboratories failed all eight tests conducted with EDTA and passed all but one test (seven of eight) without EDTA. Commenters point out that laboratories were prequalified for participation in the WET Interlaboratory Variability Study, but this prequalification required only experience with the method, not experience with both the with and without-EDTA procedures of the method. Some laboratories cultured organisms and typically conducted tests with EDTA, and other laboratories cultured organisms and typically conducted tests without EDTA.

5. False Positive Rate

Several comments stated that EPA underestimated the false positive rates measured in the WET Interlaboratory Variability Study and that the measured rates are unacceptably high for regulatory use. In the context of WET methods, the false positive rate is the rate at which tests conducted on non-toxic dilution waters indicate the presence of toxicity (*i.e.*, NOEC, LC50, or IC25 test endpoints are <100% effluent). EPA disagrees with comments that stated that false positive rates for WET test methods are unacceptably high. EPA's WET Interlaboratory Variability Study conclusively showed that measured false positive rates were below the theoretical rate of 5% estimated for the methods. Measured false positive rates were 3.7% for the Ceriodaphnia dubia Survival and Reproduction Test method, 4.35% for the Fathead Minnow Larval Survival and Growth Test method, and 0% for all other methods evaluated in the WET Interlaboratory Variability Study (with the exception of the Selenastrum capricornutum Growth Test conducted without EDTA, which EPA is removing as an option in today's action). A total of 150 valid WET tests were conducted on blank samples in the Study. Of these, only two tests (1.3%) resulted in a false positive result.

The WET Interlaboratory Variability Study conclusively demonstrated that the false positive rate of WET methods is at or below the level expected for the methods. While this rate is low (below 5%), false positives do occur. EPA accounts for this possibility in the compliance and enforcement guidance. EPA policy states that ''EPA does not recommend that the initial response to a single exceedance of a WET limit, causing no known harm, be a formal enforcement action with a civil penalty'' (USEPA, 1995a). EPA policy suggests additional testing is an appropriate initial response to a single WET limit exceedance.

Several commenters expressed concern that WET tests do not have method detection limits as contained in chemical methods to protect from reporting false positive results. As previously discussed (see section VI.C.1 of this preamble), method detection limit concepts are not applicable to WET test methods and have not been applied historically to toxicity testing methods developed by EPA or by voluntary consensus standards bodies.

EPA established the method detection limit (MDL) concept specifically for chemical methods, where results generally consist of a single measurement of the pollutant of interest by an analytical instrument. The MDL concept uses information about the variability of the measurement system to determine a response level at which the measurement can be reliably distinguished from background ''noise,'' thus providing protection from false positive results. In WET testing, the final result is not based on a single measurement, but is the product of a series of replicated measurements on a range of effluent concentrations. The additional measurements, controls, replication, and statistical approaches included in the WET test method ''measurement system'' ensure that measured responses can be reliably distinguished from background noise.

While results from chemical methods may rely on a single instrument measurement, each WET test is designed as an experiment. WET tests contain at least six treatments, each replicated from four to ten times. Measurements are made on each replicate of each treatment, so that results reflect average responses and the variability of those responses can be estimated. Each test also includes a control treatment, which is also replicated. This control treatment provides a measure of the background response and the ''noise'' or variability associated with that response.

The control response is then compared to the response in effluent treatments using statistical methods to test the hypothesis that treatments containing effluent are not significantly different from the control treatment. If this hypothesis is rejected (considering the measured background or control responses, the treatment responses, and the variability associated with those responses), then the effluent is considered toxic. Hypothesis testing techniques provide protection from false positive results by specifically setting the Type I error rate allowed in rejecting the null hypothesis. Point estimation techniques use regression analysis to determine the effluent concentration that produces a specified level of response (*e.g.*, the IC25 endpoint specifies a 25% difference between control and effluent treatment response in order for the effluent to be determined as toxic). In this case, false positive protection is inherently provided by the level of response required for generation of the selected endpoint. EPA believes that the test design employed in WET testing (including controls, replication, and hypothesis testing or point estimation) provides adequate protection from false positives.

6. Implementation

Some commenters commented on issues specifically related to the implementation of WET permits, such as reasonable potential determinations, independent applicability of WET limits, discharge monitoring report certifications, and use of WET methods in NPDES permits. Many such comments are beyond the scope of this rulemaking. In the proposed rulemaking, EPA invited comments ''only on the conduct of WET test methods and not on the implementation of WET control strategies through NPDES permits.'' EPA recognizes that NPDES permittees have continuing

concerns about implementation of WET requirements in NPDES permits. In a 'WHEREAS' clause to the Settlement Agreement described previously, EPA acknowledged that the provisions of the Settlement Agreement, which focused primarily on test methodology and, to a lesser extent, interpretation of test results, did not address all of the litigants' concerns regarding applicability of WET testing requirements to particular waterbodies (with specific reference to intermittent or effluent dependent waterbodies located in the Arid West) and did not address many of the litigants' concerns regarding regulatory implementation of WET control programs (*e.g.*, toxicity identification evaluation requirements, toxicity reduction evaluation requirements, compliance determinations, and trigger thresholds). In addition, the Settlement Agreement also acknowledged that the 1995 rule, which incorporated the WET test methods in dispute, did not specify means to adjust for the frequency, duration, or magnitude of instream exposure conditions, and that such decisions are to be made by the regulatory authority in the context of water quality standard setting and/or NPDES permitting decisions. EPA continues to acknowledge these continuing concerns and will continue to address implementation concerns as they arise in concrete circumstances or through guidance, as appropriate.

VII. 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 Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* This rule revises and ratifies test methods that are currently approved for use in NPDES permits and does not impose any additional information collection requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the U.S. Small Business Administration definitions at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less that 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 final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's rule revises and ratifies EPA WET test methods currently approved for use at 40 CFR part 136. Overall, the costs of these revisions are minimal. While some of the revisions may increase costs (*e.g.*, quality control requirements), EPA believes that these costs will be alleviated by a potential reduction in retesting and additional investigations (*e.g.*, accelerated testing, toxicity identification evaluations, or toxicity reduction evaluations) by the permittee that may result from improved test performance and increased confidence in the reliability of testing results. Many of the laboratories that conduct WET testing are already implementing the additional requirements, further minimizing any potential cost increases. EPA estimates that the average incremental cost per permit per year for today's method revisions is $276. Because monitoring frequency is typically less frequent for small entities than large entities, EPA expects the average incremental cost per permit per year to be even less than $276 for small entities. Using a cost of $276 and average revenue information for small governmental jurisdictions and businesses, EPA estimates that the incremental costs for these method revisions are less than 0.1 percent of revenue for small entities.

D. 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, Tribal, and local 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, Tribal, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-

effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for the notification of potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any one year. This rule promulgates revisions to WET test methods that are currently approved for use in NPDES permits and certification of Federal licenses under the CWA. The revisions are minor and the cost to implement them is minimal. Thus, today's rule is not subject to sections 202 and 205 of the UMRA. For the same reasons, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule also is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255; August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule promulgates revisions to WET test methods that are currently approved for use in NPDES permits and certification of Federal licenses under the CWA. The revisions are minor and the cost to implement them is minimal. Thus, Executive Order 13132 does not apply to this rule.

F. 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 final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. Today's rule promulgates revisions to WET test methods that are currently approved for use in NPDES permits and certification of Federal licenses under the CWA. The revisions are minor and the cost to implement them is minimal. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885; April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to the Executive Order because it is neither ''economically significant'' as defined in Executive Order 12866, nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

H. 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.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995, (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies (VCSBs). The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking would revise existing EPA WET test methods. For the methods that EPA is revising, the Agency did not conduct a search to identify potentially applicable voluntary consensus standards, because the revisions EPA is promulgating today would merely incorporate more specificity and detail into currently approved EPA test methods. EPA did, however, consult available voluntary consensus standards, such as ASTM standards, for guidance in conducting the Interlaboratory Variability Study and in defining certain performance characteristics of the methods.

J. Congressional Review Act

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

Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on December 19, 2002.

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List of Subjects at 40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 8, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a), Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended:

a. In Table IA of paragraph (a) by revising entries 6 to 9.

b. In paragraph (b) by revising references (34), (38), and (39).

c. In paragraph (b) by removing and reserving reference (42).

The revisions read as follows:

§ 136.3 Identification of test procedures.

(a) * * *

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS

Parameter and units	Method [1]	EPA	Standard methods 18th, 19th, 20th Ed.	ASTM	USGS
* *	* * *		*		*
Aquatic Toxicity:					
6. Toxicity, acute, fresh water organisms, LC50, percent effluent.	Ceriodaphnia dubia acute	[7] 2002.0			
	Daphnia pulex and Daphnia magna acute	[7] 2021.0			
	Fathead minnow, Pimephales promelas, and Bannerfin shiner, Cyprinella leedsi, acute.	[7] 2001.0			
	Rainbow trout, Oncorhynchus mykiss, and brook trout, Salvelinus fontinalis, acute.	[7] 2019.0			
7. Toxicity, acute, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, LC50, percent effluent.	Mysid, Mysidopsis, bahia, acute	[7] 2007.0			
	Sheepshead minnow, Cyprinodon variegatus, acute	[7] 2004.0			
	Silverside, Menidia beryllina, Menidia menidia, and Menidia peninsulae, acute.	[7] 2006.0			
8. Toxicity, chronic, fresh water organisms, NOEC or IC25, percent effluent.	Fathead minnow, Pimephales promelas, larval survival and growth.	[8] 1000.0			
	Fathead minnow, Pimephales promelas, embryo-larval survival and teratogenicity.	[8] 1001.0			
	Daphnia, Ceriodaphnia dubia, survival and reproduction	[8] 1002.0			
	Green alga, Selenastrum capricornutum, growth	[8] 1003.0			
9. Toxicity, chronic, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, NOEC or IC25, percent effluent.	Sheepshead minnow, Cyprinodon variegatus, larval survival and growth.	[9] 1004.0			
	Sheepshead minnow, Cyprinodon variegatus, embryo-larval survival and teratogenicty.	[9] 1005.0			
	Inland silverside, Menidia beryllina, larval survival and growth.	[9] 1006.0			
	Mysid, Mysidopsis bahia, survival, growth, and fecundity	[9] 1007.0			
	Sea urchin, Arbacia punctulata, fertilization	[9] 1008.0			

[1] The method must be specified when results are reported.

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[7] USEPA. October 2002. Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms. Fifth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA 821–R–02–012.

[8] USEPA. October 2002. Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. Fourth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA 821–R–02–013.

[9] USEPA. October 2002. Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Third Edition. U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA 821–R–02–014.

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(b) * * *

References, Sources, Costs, and Table Citations

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(34) USEPA. October 2002. Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms. Fifth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA 821–R–02–012. Available from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, Publ. No. PB2002–108488. Table IA, Note 7.

* * * * *

(38) USEPA. October 2002. Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. Fourth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA 821–R–02–013. Available from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, Publ. No. PB2002–108489. Table IA, Note 8.

(39) USEPA. October 2002. Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Third Edition. U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA 821–R–02–014. Available from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, Publ. No. PB2002–108490. Table IA, Note 9.

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(42) [RESERVED]

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[FR Doc. 02–29072 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday,
November 19, 2002

Part VI

Securities and Exchange Commission

17 CFR Parts 239 and 274

Disclosure of Costs and Expenses by Insurance Company Separate Accounts Registered as Unit Investment Trusts That Offer Variable Annuity Contracts; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 274

[Release Nos. 33–8147; IC–25802; File No. S7–07–02]

RIN 3235–AI39

Disclosure of Costs and Expenses by Insurance Company Separate Accounts Registered as Unit Investment Trusts That Offer Variable Annuity Contracts

AGENCY: Securities and Exchange Commission

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to the registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable annuity contracts. The amendments revise the format of the fee table to require disclosure of the range of total expenses for all of the mutual funds offered through the separate account, rather than disclosure of the expenses of each fund. In addition, the Commission is amending the fee table of the registration form for variable life insurance policies to require disclosure of the range of total expenses of all of the mutual funds offered, consistent with the amendments to the fee table of the registration form for variable annuities.

DATES: *Effective Date:* December 23, 2002.

Compliance Dates:

1. *Initial Compliance Date:* All new registration statements, and post-effective amendments that are annual updates to effective registration statements, filed on Form N–4 or Form N–6 on or after January 1, 2003, must comply with the amendments to Form N–4 or Form N–6, respectively.

2. *Final Compliance Date:* All insurance company separate accounts that are registered as unit investment trusts and that currently offer variable annuity contracts or variable life insurance policies with effective registration statements must comply with the amendments to Form N–4 or Form N–6, respectively, for post-effective amendments that are annual updates to their registration statements on Form N–4 or N–6 filed on or after January 1, 2003, and no later than January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Katy Mobedshahi, Senior Counsel, (202) 942–0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is adopting amendments to Form N–4 [17 CFR 239.17b; 17 CFR 274.11c], the form used by separate accounts organized as unit investment trusts and offering variable annuity contracts to register under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] (''Investment Company Act'') and to offer their securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act''). The Commission is also adopting amendments to Form N–6 [17 CFR 239.17c; 17 CFR 274.11d], the form used by separate accounts organized as unit investment trusts and offering variable life insurance policies to register under the Investment Company Act and to offer their securities under the Securities Act.

I. Discussion

A. Disclosure of Range of Portfolio Company Expenses

Form N–4 is the registration form used by insurance company separate accounts organized as unit investment trusts that offer variable annuity contracts to register under the Investment Company Act and to register their securities under the Securities Act. Form N–4 requires that a prospectus for a variable annuity contract include a fee table, similar to the fee table required by Form N–1A for mutual funds.[1] The fee table of Form N–4 requires disclosure of the costs and expenses that a variable annuity contractowner will bear, directly or indirectly. This includes the annual operating expenses for each mutual fund in which a contractowner may invest (''Portfolio Company'').[2]

Today, the Commission is adopting amendments that will require that the fee table of Form N–4 disclose the range of expenses for the Portfolio Companies offered through the separate account, rather than the expenses of each Portfolio Company. As we stated in the release proposing these amendments (''Proposing Release''), we believe that the use of a range of Portfolio Company expenses is warranted in order to simplify fee tables for variable annuity contracts, which have grown longer and more complex.[3] The number of investment options available through a typical variable annuity contract has expanded considerably in recent years.[4] Variable annuity fee tables have also become more complicated in recent years because insurers have increasingly offered variable annuity contracts with a variety of so-called ''unbundled'' optional features, each of which has a separate charge.[5]

We received four comment letters on the proposed amendments.[6] Two of the commenters supported the proposed requirement for disclosure of the range of expenses for all of the Portfolio Companies offered, while one commenter favored disclosure of the expenses of each Portfolio Company in the variable annuity prospectus.

We continue to believe that our approach will assist investors in understanding the fees and charges that they will pay for a variable annuity contract. The amendments will streamline the fee table in the contract prospectus and make it more understandable, while at the same time investors will continue to have access to information about the fees and expenses of each Portfolio Company. We recently amended Form N–1A, the form used by mutual funds to register under the Investment Company Act and to offer their securities under the Securities Act, to require that every mutual fund that offers its shares as an investment option for a variable annuity contract include a fee table in its prospectus.[7] Investors

[1] Item 3(a) of Form N–4.

[2] Variable annuity separate accounts registered as unit investment trusts are divided into sub-accounts, each of which invests in a different Portfolio Company. Each contractowner selects the sub-accounts, and thus the Portfolio Companies, in which his or her account value is invested. A ''Portfolio Company'' may be a registered investment company, or a series of a registered investment company, in the case of a series company.

[3] Investment Company Act Release No. 25521 (Apr. 12, 2002) [67 FR 19886, 19886 (Apr. 23, 2002)].

[4] Rick Carey, *9-Month Variable Annuity Sales Fell 17.8% To $113 Billion Last Year,* National Underwriter Life & Health/Financial Services Edition, March 11, 2002, at 16 (estimating that average number of funds available in a variable annuity contract increased from five in 1988 to 33 in 2001).

[5] Timothy C. Pfeifer, *Growing Rider Use Furthers Flexibility But Also Complexity,* National Underwriter Life & Health/Financial Services Edition, Sept. 3, 2001, at 22 (describing growth in optional riders on both variable annuities and variable life insurance).

[6] The comment letters and a summary of comments prepared by our staff are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth St., NW., Washington, DC 20549, in File No. S7–07–02. Public comments submitted electronically and a summary of comments are also available electronically on our website at www.sec.gov.

[7] Investment Company Act Release No. 25522 (Apr. 12, 2002) [67 FR 19847, 19860 (Apr. 23, 2002)] (''N–6 Adopting Release''); Item 3 of Form N–1A. Prior to this amendment, a mutual fund that offered its shares exclusively as investment options for variable life insurance policies and variable annuity contracts was permitted to omit the fee table from its prospectus. *See* Investment Company Act Release No. 16766 (Jan. 23, 1989) [54 FR 4772 (Jan. 31, 1989)] (adopting Form N–4 fee table and

in variable annuity contracts now have access to information about the fees and expenses of each Portfolio Company in the prospectus for the Portfolio Company.[8] The amendments that we are adopting to the fee table of Form N–4 will require a statement referring investors to the Portfolio Company prospectuses for more detail concerning Portfolio Company fees and expenses. In addition, the requirement that the fee table of Form N–4 include the range of Portfolio Company expenses will clearly indicate to investors the maximum fees that may be charged by any of the Portfolio Companies offered, so investors will receive disclosure in the variable annuity contract prospectus of the highest possible amount of Portfolio Company expenses that they may pay.

We note, further, that the amendments we are adopting to Form N–4 will permit registrants to continue to include disclosure of the fees and expenses for each Portfolio Company in the fee table of Form N–4, in addition to the required disclosure of the range of expenses for the Portfolio Companies. This approach will provide registrants with the flexibility to include this detailed information when they determine that it would be helpful, and not overwhelming, to investors.[9]

We are, however, modifying our proposal to require disclosure of the range of total Portfolio Company expenses.[10] Our proposal would have required line item disclosure of the range of each of several categories of Portfolio Company expenses, including management fees, distribution (12b–1) fees, and other expenses, as well as total annual operating expenses. Two commenters suggested that we require disclosure of the range of total annual operating expenses only, rather than the ranges of the various categories. The commenters reasoned that disclosing the minimum and maximum expenses for several categories of expense, as well as total annual operating expenses, would result in two columns of category expenses in the fee table that would not necessarily add up to the minimum and maximum total operating expenses shown. For example, if Portfolio Company A had management fees of 0.5%, 12b–1 fees of 0.25%, other expenses of 0.3%, and total expenses of 1.05%; Portfolio Company B had management fees of 0.9%, 12b–1 fees of 0%, other expenses of 0.25%, and total expenses of 1.15%; and Portfolio Company C had management fees of 1.0%, 12b–1 fees of 0%, other expenses of 0.25%, and total expenses of 1.25%, then the range of total expenses for all three Portfolio Companies required to be disclosed would be 1.05% to 1.25%, rather than the sum of the minimum and maximum category expenses columns, which would be 0.75% (0.5% + 0% + 0.25%) to 1.55% (1.0% + 0.25% + 0.3%). We were persuaded by the commenters that this result might confuse investors, rather than simplifying disclosure. In order to help investors understand the types of expenses that are included in total Portfolio Company operating expenses, we are revising the caption in the Portfolio Company expenses section of the fee table to state explicitly that total expenses include management fees, distribution (12b–1) fees, and other expenses.[11]

We are also amending Form N–6, the registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies, to require disclosure of the range of total expenses for all the Portfolio Companies, rather than line item disclosure of the range of each category of expenses.[12] We had indicated in the Proposing Release that if we modified the proposed amendments to the fee table of Form N–4 in response to comments, we intended to make conforming changes to Form N–6.[13]

B. Other Fee Table Changes

We are adopting other amendments to the format and instructions for the fee table of Form N–4 substantially as proposed, with minor changes to address commenters' suggestions.

Expense Reimbursement and Fee Waiver Arrangements. We are adopting, as proposed, a requirement that Portfolio Company operating expenses be disclosed before expense reimbursement and fee waiver arrangements. Expenses after reimbursement or waiver could be disclosed in a footnote.[14]

Expense Example. We are adopting, substantially as proposed, amendments to the expense example and accompanying instructions of the fee table of Form N–4. These amendments would require an expense example based on the maximum expenses charged by any of the Portfolio Companies.[15] Registrants would be permitted to provide an additional example, based on the minimum expenses charged by any of the Portfolio Companies.[16] In lieu of providing examples based on the maximum and minimum expenses charged by the Portfolio Companies offered through the contract, a registrant would be permitted to include expense examples for each of the Portfolio Companies.[17]

In response to a commenter's suggestion, we are modifying the Instructions to the expense example of Item 3(a) regarding conversion of annual contract fees to a percentage basis by providing that the total amount of the contract fees collected during the year should be divided by the total average net assets for the contract (which includes both general account and separate account assets), rather than only separate account assets, as we had proposed and as the instructions to Item

eliminating the fee table requirement in Form N–1A for Portfolio Companies offering shares exclusively to insurance company separate accounts).

[8] Investors in variable annuity contracts receive the prospectuses for both the separate account unit investment trust and the Portfolio Companies they have selected.

[9] Instruction 20 to Item 3(a) of Form N–4; Instruction 4(f) to Item 3 of Form N–6.

[10] Item 3(a) and Instruction 17(a) to Item 3(a) of Form N–4.

[11] Item 3(a) of Form N–4. If none of the Portfolio Companies offered by a variable annuity contract charge distribution (12b–1) fees, the reference to these fees may be omitted.

[12] Item 3 and Instructions 4 and 5 to Item 3 of Form N–6.

[13] Proposing Release, *supra* note 3, 67 FR at 19888.

[14] Instructions 18(a), 19, and 22(a) to Item 3(a) of Form N–4. We intend that the staff construe the amendments to the fee table of Form N–4 consistent with the approach taken under Form N–1A, to permit the addition of one line to the fee table showing the range of net Portfolio Company operating expenses after taking account of contractual limitations that require reimbursement or waiver of expenses. This additional line would be placed immediately under the ''Total Annual [Portfolio Company] Operating Expenses'' line of the fee table and would have to use appropriate descriptive captions. A footnote to the fee table would be required to describe the contractual arrangement. *See* Proposing Release, *supra* note 3, 67 FR at 19887 n.15.

[15] Instruction 21(b) to Item 3(a) of Form N–4. Under Form N–1A, the staff has permitted mutual funds with fees that are subject to a contractual limitation that requires reimbursement or waiver of expenses to take account of the reimbursement or waiver in calculating the example required by the fee table of Item 3, but only for the duration of the contractual limitation. Funds may not assume that the reimbursement or waiver will continue for periods subsequent to the contractual limitation period in calculating expenses shown in the example. *Cf.* Letter from Barry D. Miller, Associate Director, Division of Investment Management, SEC, to Craig S. Tyle, General Counsel, Investment Company Institute (Oct. 2, 1998) (permitting funds with fees that are subject to a contractual limitation that requires reimbursement or waiver to add two lines to the fee table showing the amount of the reimbursement or waiver and total net expenses). We intend that the staff construe the amendments to the expense example requirements of Form N–4 consistent with the approach it has taken with the expense example of the fee table of Form N–1A, to permit expense examples to take into account contractual limitations on Portfolio Company operating expenses that require reimbursement or waiver of expenses, but only for the period of the contractual limitation.

[16] Instruction 21(b) to Item 3(a) of Form N–4.

[17] *Id.*

3(a) of Form N–4 currently require.[18] This revision will result in a more accurate calculation of the annual contract fee percentage, by attributing the contract fee to both separate account and general account assets.

In addition, in response to a commenter's suggestion, we are revising the narrative that would be required to precede the expense example, to clarify that expenses reflected in the example include separate account fees and charges, as well as the maximum expenses charged by any of the Portfolio Companies.[19]

Requirement to Disclose All Fees and Charges. We are adopting, as proposed, an instruction to the fee table of Form N–4 that would require registrants to disclose all recurring fees and charges, including fees and charges for all optional features.[20] One commenter suggested that we clarify the instruction requiring disclosure of all recurring fees and charges, to indicate that mutually exclusive fees (such as fees for mutually exclusive death benefit options) do not need to be presented in the fee table. We disagree with this approach because it would result in charges for some available features not being disclosed. As a result, investors who are considering these features would be unable to assess their cost. Registrants may, however, indicate, through a footnote or other means, that charges for certain features shown in the fee table are mutually exclusive. We note that registrants should not include multiple mutually exclusive fees in the expense example, but should include the highest of these charges. For example, if a contract offers two mutually exclusive death benefit options, with mortality and expense risk charges of 1.25% and 1.40%, respectively, the expense example should reflect a mortality and expense risk charge of 1.40%.

II. Effective Date and Compliance Date

The effective date of these amendments is December 23, 2002. All new registration statements, and post-effective amendments that are annual updates to effective registration statements, filed on Form N–4 or N–6 on or after January 1, 2003, must comply with these amendments. The final compliance date for filing amendments to effective registration statements to conform to these amendments is January 1, 2004. A registrant may, at its option, comply with the requirements of these amendments to Forms N–4 and N–6 at any time after the effective date.

As noted above, the Commission recently amended Form N–1A, the registration form for mutual funds, to require a Portfolio Company that offers its shares exclusively as investment options for variable annuity contracts and variable life insurance policies to include a fee table in its prospectus.[21] Registrants on Form N–1A are required to comply with this amendment with respect to all new registration statements, and post-effective amendments that are annual updates to effective registration statements, filed on or after September 1, 2002.[22] During the transition period, a separate account that is registered on Form N–4 or Form N–6 should include in Item 3(a) of Form N–4, or Item 3 of Form N–6, a fee table for any Portfolio Company whose Form N–1A has not been updated to include a fee table.[23]

III. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules on affected persons and entities. In the Proposing Release, we requested comment and specific data regarding the costs and benefits of the proposed amendments, but received none.

Form N–4 is the registration form used by insurance company separate accounts organized as unit investment trusts that offer variable annuity contracts to register under the Investment Company Act and to register their securities under the Securities Act.[24] Form N–4 requires that a prospectus for a variable annuity contract include a fee table showing the costs and expenses that a variable annuity contractowner will bear, directly or indirectly, including the annual operating expenses for each mutual fund in which a contractowner may invest (''Portfolio Company''). The amendments adopted today will revise the fee table in the prospectus of Form N–4 to require registrants to disclose the range of total expenses for all of the Portfolio Companies offered, rather than separately disclosing the fees and expenses of each Portfolio Company. Registrants will still be permitted to include additional disclosure of the fees and expenses of each Portfolio Company offered through a sub-account of the registrant. Use of a range of Portfolio Company expenses is warranted in order to streamline and improve fee tables for variable annuity contracts, which have grown increasingly longer and more complex in recent years as the number of investment options available through a typical variable annuity contract has expanded. In addition, the amendments that we are adopting include a conforming change to the fee table of Form N–6, to require disclosure of only the range of total expenses for all the Portfolio Companies, and not line item disclosure of the range of each category of expenses.

The amendments will also make other technical changes conforming the format and the instructions for the fee table of Form N–4 more closely to the fee tables in Forms N–6 and N–1A, and for purposes of consistency with the disclosure of the range of Portfolio Company expenses, as described in the Proposing Release. These changes will improve transparency of fee disclosure. These amendments, discussed in more detail in the Proposing Release, include the following:

- Revising the expense example in the fee table to require only an example based on the maximum expenses charged by any Portfolio Company.
- Making other modifications to the format of the example.
- Prescribing narrative explanations to precede each section of the fee table.
- Adding an instruction requiring disclosure of all recurring fees and charges other than Portfolio Company operating expenses.

A. Benefits

We believe that the amendments adopted today to Form N–4 will benefit investors by making the variable annuity prospectus easier for investors to understand. As noted above, disclosure of a range of Portfolio Company expenses should make fee tables for variable annuity contracts, which have grown increasingly longer and more complex in recent years, shorter and more comprehensible. Investors will continue to have access to information about the fees and expenses of each Portfolio Company in the prospectus for the Portfolio Company. The amendments will also modify the expense example of the Form N–4 fee table, consistent with the use of the range of Portfolio Company expenses in the fee table.

The amendments will make technical changes to the format and instructions of the fee table of Form N–4, in order to improve transparency of the fees and

[18] Instruction 21(f) to Item 3(a) of Form N–4; Instruction 21(e) to Item 3(a) of current Form N–4.

[19] Item 3(a) and Instructions 21(a) and (b) to Item 3(a) of Form N–4.

[20] Instruction 15 to Item 3(a) of Form N–4.

[21] *See supra* note 7 and accompanying text.

[22] N–6 Adopting Release, *supra* note 7, 67 FR at 19860 (discussing compliance date for amendment to Form N–1A).

[23] *Id.* at 19860 n.83.

[24] Under a variable annuity contract, purchase payments are invested in an insurer's separate account created under state law and legally segregated from the assets of the insurer's general account. The separate account offers the contract owner a number of investment options, which generally consist of mutual funds.

charges that contractowners will pay, to make the Form N–4 fee table more consistent with its counterpart in Form N–6, and to reflect changes in the types of fees and charges assessed by variable annuity contracts since the fee table of Form N–4 was adopted. We believe these changes may improve disclosure of variable annuity fees and expenses to investors. It is difficult to quantify the effects of this improved disclosure, though we note that the changes we are adopting are limited in nature.

The amendments may also result in slightly reduced printing and mailing costs to registrants. Disclosure of the range of Portfolio Company expenses rather than the expenses of each Portfolio Company may shorten the typical variable annuity prospectus, because disclosure of these expenses sometimes comprises a full page, or more, of a variable annuity prospectus.[25] We do not expect that any of the other changes in the amendments will lengthen the variable annuity prospectus, as these changes will largely affect the format in which fee and expense information is to be presented, rather than the quantity of information presented. Based on a print run of 20,000 copies for a typical variable annuity prospectus, and printing and mailing costs of $0.05 per page, the reduction in printing and mailing costs attributable to the proposed amendments may equal $1,000 for a typical variable annuity contract.[26] Based on an estimate of 814 variable annuity contracts currently being actively marketed, therefore, these printing and postage savings could total $814,000 annually.[27]

In addition, conforming the disclosure requirements for Portfolio Company expenses in variable annuity prospectuses to those in variable life prospectuses may simplify the process of preparing registration statements for some registrants, because frequently insurance companies that issue variable annuities also issue variable life insurance.[28] We believe that these cost savings will be relatively small, however.

Finally, the conforming amendments we are adopting to the fee table of Form N–6 will reduce the potential for confusion to investors that may occur if the disclosure of the range of minimum and maximum expenses for each category of Portfolio Company operating expenses results in two columns that do not add up to the range of minimum and maximum total operating expenses. This change will streamline the Form N–6 fee table, while continuing to ensure that investors have access to fee information about the Portfolio Companies in which they invest.

B. Costs

Although the amendments to the fee table of Form N–4 are limited and many of them are technical in nature, they differ from the current requirements of the fee table of Form N–4, which have been in place since 1989. Therefore, variable annuity issuers may incur a one-time cost for training in order for their personnel, particularly lawyers and others who are responsible for supervising the preparation of filings on Form N–4, to review and analyze the disclosure requirements of the amendments to Form N–4. Because the amendments will make mostly minor changes to the current format of the Form N–4 fee table, and will not require the disclosure of information that the current fee table does not require, we estimate that this cost will be fairly small. We lack data necessary to make a more precise estimate of the cost resulting from the amendments, but we estimate that this cost will be approximately $500 for each insurance company that sponsors separate accounts that are registered on Form N–4 and issue variable annuity contracts that are actively being sold. Further, we estimate that there are 94 such insurance companies.[29] We therefore estimate the one-time cost attributable to the proposed amendments to Form N–4 to be $47,000. We requested comment on these cost estimates in the Proposing Release, but received none.

We do not expect that the amendments to Form N–4 will result in any net effect on the aggregate hour burden for completing and filing Form N–4. We expect that in preparing their fee tables for Form N–4, registrants will still need to collect information about the expenses for each Portfolio Company offered through the contract, in order to determine the minimum and maximum total operating expenses of the Portfolio Companies offered through the contract. We also expect that the other proposed amendments modifying the format and instructions of the Form N–4 fee table to conform more closely to the Form N–6 fee table will have no net effect on the burden hours for completing and filing Form N–4, because they will not require disclosure of any additional information by issuers.

Finally, we do not anticipate that the conforming changes we are making to the fee table of Form N–6 will result in any increased costs to issuers or investors. Issuers will be required to disclose only the range of total Portfolio Company operating expenses, rather than the range of each category of expenses as well as the range of total expenses. In addition, issuers have only recently begun using new Form N–6, or have not yet begun doing so. Therefore, any cost for training personnel to apply the amendment to the fee table of Form N–6 may be incorporated in the overall cost for training personnel in the disclosure requirements of Form N–6 as a whole.

IV. Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and section 3(f) of the Securities Exchange Act of 1934 require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[30] The Commission has considered these factors. We requested comments regarding the effects of the proposed amendments on efficiency, competition and capital formation and received none.

The amendments to Form N–4 and Form N–6 are expected to have minimal effects on efficiency and competition among issuers of variable insurance products. As adopted, the amendments will revise the fee table in the prospectus of Form N–4 to require registrants to disclose the range of expenses for all the Portfolio Companies offered through the separate account, rather than disclosing separately the

[25] The amendments will require a registrant to include a statement referring investors to Portfolio Company prospectuses for more detail concerning Portfolio Company fees and expenses. This required statement would not impose any additional disclosure burden on registrants, because the instructions to Form N–4 currently require a similar cross-reference to the Portfolio Company prospectuses. *See* General Instruction 1 to Item 3(a) of current Form N–4.

[26] An insurance company that issues variable annuities provided the staff with estimates of the typical print run of a prospectus and the associated printing and mailing costs.

[27] The estimate of 814 variable annuity contracts is based on the number of contracts tracked by Morningstar, Inc. Morningstar, Principia Pro Plus, Variable Annuities/Life (May 2002). While Morningstar tracks a substantial majority of variable annuity contracts, it does not track all existing contracts.

[28] We estimate, based on an analysis of data from the EDGAR filing system for 2000 and 2001, that approximately two-thirds of insurers issuing variable annuities also issue variable life insurance policies.

[29] The estimate of the number of insurance companies issuing variable annuities is based on the staff's analysis of data from the EDGAR filing system for 2000 and 2001.

[30] 15 U.S.C. 77b(b), 78c(f), and 80a-2(c).

fees and expenses of each Portfolio Company. The amendments will make certain other technical changes to conform the format and instructions to the fee table of Form N–4 more closely to its counterparts in Form N–6 and Form N–1A. In addition, the amendments will revise the fee table of Form N–6 to require disclosure of the range of total expenses for all the Portfolio Companies offered, and not disclosure of the range of each category of Portfolio Company expenses, consistent with the amendments to the fee table of Form N–4. The amendments will allow fee table disclosure of Portfolio Company expenses in both Form N–4 and Form N–6 to be shorter, and generally make fee table disclosure clearer and more understandable to investors. However, we do not expect the amendments to have any significant effect on competition and efficiency because they will not change the quantity of information about fees and expenses that investors in variable annuity contracts receive. Similarly, it is unclear whether the amendments to Form N–4 and Form N–6 will affect capital formation.

V. Paperwork Reduction Act

As explained in the Proposing Release, certain provisions of Form N–4 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*]. The title for the collection of information is ''Form N–4 under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Separate Accounts Organized as Unit Investment Trusts.'' The information collection requirements imposed by Form N–4 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

We published a notice soliciting comments on the collection of information requirements of Form N–4 in the Proposing Release. The Commission did not receive any comments on the Paperwork Reduction Act portion of the Proposing Release.

Form N–4 (OMB Control No. 3235–0318) was adopted pursuant to section 8(a) of the Investment Company Act [15 U.S.C. 80a–8] and section 5 of the Securities Act [15 U.S.C. 77e].[31] As stated above, the purpose of Form N–4 is to meet the registration and disclosure requirements of the Securities Act and Investment Company Act and to enable separate accounts organized as unit investment trusts that offer variable annuity contracts to provide investors with information necessary to evaluate an investment in a variable annuity contract.

The Commission proposed to amend Form N–4 to conform the disclosure of Portfolio Company expenses in the fee table to the format used in Form N–6, the registration form for insurance company separate accounts registered as unit investment trusts that offer variable life insurance policies. Under the proposed amendments, registrants on Form N–4 will be required to disclose only the range of the expenses for all of the Portfolio Companies in which the separate account invests. Variable annuity investors will continue to have access to complete information about the Portfolio Company fees and expenses because disclosure of the fees and expenses for each Portfolio Company will be included in its prospectus under the requirements of Form N–1A. The amendments will also make other technical changes in order to conform the format and instructions for the fee table of Form N–4 to its counterparts in Form N–6 and Form N–1A.

We do not expect that the amendments to Form N–4 will result in any net effect on the aggregate hour burden for completing and filing Form N–4, and therefore the amendments to Form N–4 will not impose any additional collection of information on registrants. We expect that in preparing their fee tables for Form N–4, registrants will still need to collect information about the total operating expenses for each Portfolio Company offered through the contract, in order to determine the minimum and maximum expenses of the Portfolio Companies. We also expect that the other amendments modifying the format of the Form N–4 fee table to conform more closely to the fee tables of Forms N–6 and N–1A will have no net effect on the burden hours for completing and filing Form N–4, because they will not require any additional information to be disclosed.

In addition, we expect that the conforming amendments we are adopting to Form N–6, the registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies, requiring disclosure of only the range of total expenses for all of the Portfolio Companies offered through the separate account rather than line item disclosure of the range of each category of expenses as well as the range of total expenses, will have no effect on the burden of completing Form N–6. Form N–6 already requires variable life insurance issuers to calculate the range of total expenses for each Portfolio Company offered through a variable life insurance policy, and therefore the amendments will not impose any additional costs on issuers.

VI. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the proposed amendments to Form N–4 would not, if adopted, have a significant economic impact on a substantial number of small entities. The initial certification was attached to the Proposing Release as Appendix A. We requested comments on the certification, but received none.

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Commission certifies that the amendments to Form N–6 adopted as part of this Adopting Release will not have a significant economic impact on a substantial number of small entities. The amendments will revise the fee table of Form N–6 to require only disclosure of the range of total expenses for all of the Portfolio Companies offered through a variable life insurance policy, rather than line item disclosure of the range of each category of expenses as well as the range of total expenses. The economic impact of the amendments will not be significant. Form N–6 already requires variable life insurance issuers to calculate the range of total expenses for each Portfolio Company offered through a variable life insurance policy, and therefore the amendments will not impose any additional costs on issuers.

VII. Statutory Authority

The amendments to Form N–4 and Form N–6 are being adopted pursuant to sections 5, 7, 8, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)] and sections 8, 24, 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24, 80a–29, and 80a–37].

[31] OMB approved the collection of information requirements contained in Form N–6 (OMB Control No. 3235–0503) The title for the collection of information is ''Form N–6 Under the Investment Company Act of 1940 and the Securities Act of 1933, Registration Statement of Variable Life Insurance Separate Accounts Registered as Unit Trust.''

List of Subjects

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Form Amendments

For the reasons set out in the preamble, the Commission amends Chapter II, Title 17 of the Code of Federal Regulations as follows.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The general authority citation for Part 239 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

2. The authority citation for Part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

Section 274.101 is also issued under secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

3. Form N–4 (referenced in §§ 239.17b and 274.11c), Item 3(a), is amended by:

a. Revising Item 3(a);

b. Revising Instructions: General Instructions 1, 3, and 5;

c. Removing the heading ''Portfolio Company Annual Expenses'' preceding Instruction 15;

d. Removing Instructions 16 through 21;

e. Redesignating Instruction 15 as Instruction 16;

f. Adding new Instruction 15;

g. Adding the heading ''Annual [Portfolio Company] Operating Expenses'' to precede newly redesignated Instruction 16; and

h. Adding new Instructions 17 through 22.

The additions and revisions read as follows:

Note: The text of Form N–4 does not and these amendments will not appear in the *Code of Federal Regulations.*

Form N–4

* * * * *

Item 3. Synopsis

(a) Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 430.421(d)]:

The following tables describe the fees and expenses that you will pay when buying, owning, and surrendering the contract. The first table describes the fees and expenses that you will pay at the time that you buy the contract, surrender the contract, or transfer cash value between investment options. State premium taxes may also be deducted.

Contractowner Transaction Expenses:	
Sales Load Imposed on Purchases (as a percentage of purchase payments)	_____%
Deferred Sales Load (as a percentage of purchase payments or amount surrendered, as applicable) ...	_____%
Surrender Fees (as a percentage of amount surrendered, if applicable)	_____%
Exchange Fee	_____%

The next table describes the fees and expenses that you will pay periodically during the time that you own the contract, not including [portfolio company] fees and expenses.

[*Annual*] *Contract Fee.*	
Separate Account Annual Expenses (as a percentage of average account value)	
Mortality and Expense Risk Fees	_____%
Account Fees and Expenses	_____%
Total Separate Account Annual Expenses	_____%

The next item shows the minimum and maximum total operating expenses charged by the portfolio companies that you may pay periodically during the time that you own the contract. More detail concerning each [portfolio company's] fees and expenses is contained in the prospectus for each [portfolio company].

Total Annual [Portfolio Company] Operating Expenses	Minimum	Maximum
(Expenses that are deducted from [portfolio company] assets, including management fees, distribution [and/or service] (12b–1) fees, and other expenses)	_____%	_____%

Example

This Example is intended to help you compare the cost of investing in the contract with the cost of investing in other variable annuity contracts. These costs include contract owner transaction expenses, contract fees, separate account annual expenses, and [portfolio company] fees and expenses.

The Example assumes that you invest $10,000 in the contract for the time periods indicated. The Example also assumes that your investment has a 5% return each year and assumes the maximum fees and expenses of any of the [portfolio companies]. Although your actual costs may be higher or lower, based on these assumptions, your costs would be:

(1) If you surrender your contract at the end of the applicable time period:

1 year	3 years	5 years	10 years
$_____	$_____	$_____	$_____

(2) If you annuitize at the end of the applicable time period:

1 year	3 years	5 years	10 years
$_____	$_____	$_____	$_____

(3) If you do *not* surrender your contract:

1 year	3 years	5 years	10 years
$_____	$_____	$_____	$_____

Instructions

General Instructions

1. Include the narrative explanations in the order indicated. A Registrant may modify a narrative explanation if the explanation contains comparable information to that shown.

* * * * *

3. A Registrant may omit captions if the Registrant does not charge the fees or expenses covered by the captions. A Registrant may modify or add captions if the captions shown do not provide an accurate description of the Registrant's fees and expenses.

* * * * *

5. In the Contractowner Transaction Expenses, [Annual] Contract Fee, and Separate Account Annual Expenses tables, the Registrant must disclose the maximum guaranteed charge, unless a specific instruction directs otherwise. The Registrant may disclose the current charge, in addition to the maximum charge, if the disclosure of the current charge is no more prominent than, and does not obscure or impede understanding of, the disclosure of the maximum charge. In addition, the Registrant may include in a footnote to the table a tabular, narrative, or other presentation providing further detail regarding variations in the charge. For example, if deferred sales charges decline over time, the Registrant may

include in a footnote a presentation regarding the scheduled reductions in the deferred sales charges.

* * * * *

15. If the Registrant (or any other party pursuant to an agreement with the Registrant) imposes any other recurring charge other than annual portfolio company total operating expenses, add another caption describing it and list the (maximum) amount or basis on which the charge is deducted.

Total Annual [Portfolio Company] Operating Expenses

* * * * *

17. (a) If a Registrant has multiple sub-accounts, it should disclose the minimum and maximum ''Total Annual [Portfolio Company] Operating Expenses'' for any portfolio company. ''Total Annual [Portfolio Company] Operating Expenses'' include all expenses that are deducted from a portfolio company's assets. The amount of expenses deducted from a portfolio company's assets are the amounts shown as expenses in the portfolio company's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S-X [17 CFR 210.6–07]).

(b) ''Total Annual [Portfolio Company] Operating Expenses'' do not include extraordinary expenses as determined under generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred by any portfolio company that would, if included, materially affect the minimum or maximum amounts shown in the table, disclose in a footnote to the table what the minimum and maximum ''Total Annual [Portfolio Company] Operating Expenses'' would have been had the extraordinary expenses been included.

18. (a) Base the percentages of ''Total Annual [Portfolio Company] Operating Expenses'' on amounts incurred during the most recent fiscal year, but include in expenses amounts that would have been incurred absent expense reimbursement or fee waiver arrangements. If a portfolio company has a fiscal year different from that of the Registrant, base the expenses on those incurred during either the period that corresponds to the fiscal year of the Registrant, or the most recently completed fiscal year of the portfolio company. If the Registrant or a portfolio company has changed its fiscal year and, as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining ''Total Annual [Portfolio Company] Operating Expenses.''

(b) If there have been any changes in ''Total Annual [Portfolio Company] Operating Expenses'' that would materially affect the information disclosed in the table:

(i) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(ii) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(c) A change in ''Total Annual [Portfolio Company] Operating Expenses'' means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. A change in ''Total Annual [Portfolio Company] Operating Expenses'' does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in a portfolio company's assets.

19. A Registrant may reflect minimum and maximum actual total [portfolio company] operating expenses that include expense reimbursement or fee waiver arrangements in a footnote to the table. If the Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a portfolio company.

20. A Registrant may include additional tables showing annual operating expenses separately for each portfolio company immediately following the required table of ''Total Annual [Portfolio Company] Operating Expenses.'' The additional tables should be prepared in the format, and in accordance with the Instructions, prescribed in Item 3 of Form N–1A [17 CFR 239.15A; 17 CFR 274.11A] for disclosing ''Annual Fund Operating Expenses.''

Example

21. For purposes of the Example in the table:

(a) Assume that the percentage amounts listed under ''Separate Account Annual Expenses'' remain the same in each year of the 1-, 3-, 5-, and 10-year periods, except that an adjustment may be made to reflect reduced annual expenses resulting from completion of the amortization of initial organization expenses;

(b) Assume deduction of the maximum percentage amount of expenses shown under ''Total Annual [Portfolio Company] Operating Expenses,'' and that this amount remains the same in each year of the 1-, 3-, 5-, and 10-year periods, except that an adjustment may be made to reflect reduced annual expenses resulting from completion of the amortization of initial organization expenses. An additional example that assumes deduction of the minimum percentage amount of expenses shown under ''Total Annual [Portfolio Company] Operating Expenses'' may also be provided, immediately following the required expense example based on maximum portfolio company expenses. In lieu of providing the required example based on maximum portfolio company expenses, a Registrant may include separate expense examples based on the expenses of each portfolio company;

(c) Assume the maximum sales load that may be deducted from purchase payments is deducted;

(d) For any breakpoint in any fee, assume that the amount of the Registrant's (and the portfolio company's) assets remains constant as of the level at the end of the most recently completed fiscal year;

(e) Assume no exchanges or other transactions;

(f) Reflect any [annual] contract fee by dividing the total amount of [annual] contract fees collected during the year that are attributable to the contract offered by the prospectus by the total average net assets that are attributable to the contract offered by the prospectus. Add the resulting percentage to ''Separate Account Annual Expenses,'' and assume that it remains the same in each year of the 1-, 3-, 5-, and 10-year periods;

(g) Reflect any contingent deferred sales load by assuming a complete surrender on the last day of the year;

(h) Provide the information required in the third section of the Example only if a sales load or other fee is charged upon a complete surrender; and

(i) Include in the Example the information provided by the caption ''If you annuitize at the end of the applicable time period'' only if the Registrant charges fees upon annuitization that are different from those charged upon surrender.

22. *New Registrants.* For purposes of this Item, a ''New Registrant'' is a Registrant that does not include in Form N–4 financial statements reporting operating results or that includes financial statements for the Registrant's initial fiscal year reporting operating results for a period of 6 months or less.

The following Instructions apply to New Registrants:

(a) Base the percentages in ''Total Annual [Portfolio Company] Operating Expenses'' on payments that will be made, but include in expenses amounts that will be incurred without reduction for expense reimbursement or fee waiver arrangements, estimating amounts of expenses that are not established pursuant to contract. Disclose in a footnote to the table that ''Total Annual [Portfolio Company] Operating Expenses'' are based, in part, on estimated amounts for the current fiscal year.

(b) A New Registrant may reflect in a footnote to the table expense reimbursement or fee waiver arrangements that are expected to reduce the minimum and/or maximum total [portfolio company] operating expenses shown in the table. If the New Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a portfolio company.

(c) Complete only the 1- and 3-year period portions of the Example, and estimate any [annual] contract fees collected.

* * * * *

4. Form N–6 (referenced in § 239.17c and § 274.11d), Item 3 is amended by:

a. Revising the introductory text and fee tables; and

b. Revising Instructions 4 and 5.

The revisions read as follows:

Note: The text of Form N–6 does not and these amendments will not appear in the *Code of Federal Regulations.*

Form N–6

* * * * *

Item 3. Risk/Benefit Summary: Fee Table

Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], after Item 2:

The following tables describe the fees and expenses that you will pay when buying, owning, and surrendering the Policy. The first table describes the fees and expenses that you will pay at the time that you buy the Policy, surrender the Policy, or transfer cash value between investment options.

TRANSACTION FEES

Charge	When charge is deducted	Amount deducted
Maximum Sales Charge Imposed on Premiums (Load)		
Premium Taxes		
Maximum Deferred Sales Charge (Load)		
Other Surrender Fees		
Transfer Fees		

The next table describes the fees and expenses that you will pay periodically during the time that you own the Policy, not including [Portfolio Company] fees and expenses.

PERIODIC CHARGES OTHER THAN [PORTFOLIO COMPANY] OPERATING EXPENSES

Charge	When charge is deducted	Amount deducted
Cost of Insurance *: Minimum and Maximum Charge		
Charge for a [Representative Contractowner]		
Annual Maintenance Fee		
Mortality and Expense Risk Fees		
Administrative Fees		

* [Footnote: Include disclosure required by Instruction 3(b).]

The next item shows the minimum and maximum total operating expenses charged by the portfolio companies that you may pay periodically during the time that you own the contract. More detail concerning each [Portfolio Company's] fees and expenses is contained in the prospectus for each [Portfolio Company].

Total Annual [Portfolio Company] Operating Expenses	Minimum	Maximum
(Expenses that are deducted from [Portfolio Company] assets, including management fees, distribution [and/or service] (12b–1) fees, and other expenses)	_____%	_____%

Instructions

* * * * *

4. *Total Annual [Portfolio Company] Operating Expenses.*

(a) The Registrant may substitute the term used in the prospectus to refer to the Portfolio Companies for the bracketed portion of the caption provided.

(b) If a registrant has multiple sub-accounts, it should disclose the minimum and maximum ''Total Annual [Portfolio Company] Operating Expenses'' for any Portfolio Company. ''Total Annual [Portfolio Company] Operating Expenses'' include all expenses that are deducted from a Portfolio Company's assets. The amount of expenses deducted from a Portfolio Company's assets are the amounts shown as expenses in the Portfolio Company's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X [17 CFR 210.6–07]).

(c) ''Total Annual [Portfolio Company] Operating Expenses'' do not include extraordinary expenses as determined under generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred by any Portfolio Company that would, if included, materially affect the minimum or maximum amounts shown in the table, disclose in a footnote to the table what the minimum and maximum ''Total Annual [Portfolio Company] Operating Expenses'' would have been had the extraordinary expenses been included.

(d)(i) Base the percentages of ''Total Annual [Portfolio Company] Operating Expenses'' on amounts incurred during the most recent fiscal year, but include in expenses amounts that would have been incurred absent expense reimbursement or fee waiver arrangements. If a Portfolio Company has a fiscal year different from that of the Registrant, base the expenses on those incurred during either the period that corresponds to the fiscal year of the Registrant, or the most recently completed fiscal year of the Portfolio Company. If the Registrant or a Portfolio Company has changed its fiscal year and, as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining ''Total Annual [Portfolio Company] Operating Expenses.''

(ii) If there have been any changes in ''Total Annual [Portfolio Company] Operating Expenses'' that would materially affect the information disclosed in the table:

(A) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(B) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(iii) A change in ''Total Annual [Portfolio Company] Operating Expenses'' means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. A change in ''Total Annual [Portfolio Company] Operating Expenses'' does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in a Portfolio Company's assets.

(e) A Registrant may reflect minimum and maximum actual total [Portfolio Company] operating expenses that include expense reimbursement or fee waiver arrangements in a footnote to the table. If the Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a Portfolio Company.

(f) A Registrant may include additional tables showing annual operating expenses separately for each Portfolio Company immediately following the required table of ''Total Annual [Portfolio Company] Operating Expenses.'' The additional tables should be prepared in the format, and in accordance with the Instructions, prescribed in Item 3 of Form N–1A [17 CFR 239.15A; 17 CFR 274.11A] for disclosing ''Annual Fund Operating Expenses.''

5. *New Registrants.* For purposes of this Item, a ''New Registrant'' is a Registrant that does not include in Form N–6 financial statements reporting operating results or that includes financial statements for the Registrant's initial fiscal year reporting operating results for a period of 6 months or less. The following Instructions apply to New Registrants:

(a) Base the percentages in ''Total Annual [Portfolio Company] Operating Expenses'' on payments that will be made, but include in expenses amounts that will be incurred without reduction for expense reimbursement or fee waiver arrangements, estimating amounts of expenses that are not established pursuant to contract. Disclose in a footnote to the table that ''Total Annual [Portfolio Company] Operating Expenses'' are based, in part, on estimated amounts for the current fiscal year.

(b) A New Registrant may reflect in a footnote to the table expense reimbursement or fee waiver arrangements that are expected to reduce the minimum and/or maximum total [Portfolio Company] operating expenses shown in the table. If the New Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a Portfolio Company.

Dated: November 13, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29312 Filed 11–18–02; 8:45 am]

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Federal Register

Tuesday,
November 19, 2002

Part VII

The President

Executive Order 13276—Delegation of Responsibilities Concerning Undocumented Aliens Interdicted or Intercepted in the Caribbean Region

Federal Register
Vol. 67, No. 223
Tuesday, November 19, 2002

Presidential Documents

Title 3—

The President

Executive Order 13276 of November 15, 2002

Delegation of Responsibilities Concerning Undocumented Aliens Interdicted or Intercepted in the Caribbean Region

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), and section 301 of title 3, United States Code, and in order to delegate appropriate responsibilities to Federal agencies for responding to migration of undocumented aliens in the Caribbean region, it is hereby ordered:

Section 1. *Duties and Authorities of Agency Heads.* Consistent with applicable law,

(a)(i) The Attorney General may maintain custody, at any location he deems appropriate, of any undocumented aliens he has reason to believe are seeking to enter the United States and who are interdicted or intercepted in the Caribbean region. In this regard, the Attorney General shall provide and operate a facility, or facilities, to house and provide for the needs of any such aliens. Such a facility may be located at Guantanamo Bay Naval Base or any other appropriate location.

(ii) The Attorney General may conduct any screening of such aliens that he deems appropriate, including screening to determine whether such aliens should be returned to their country of origin or transit, or whether they are persons in need of protection who should not be returned without their consent. If the Attorney General institutes such screening, then until a determination is made, the Attorney General shall provide for the custody, care, safety, transportation, and other needs of the aliens. The Attorney General shall continue to provide for the custody, care, safety, transportation, and other needs of aliens who are determined not to be persons in need of protection until such time as they are returned to their country of origin or transit.

(b) The Secretary of State shall provide for the custody, care, safety, transportation, and other needs of undocumented aliens interdicted or intercepted in the Caribbean region whom the Attorney General has identified as persons in need of protection. The Secretary of State shall provide for and execute a process for resettling such persons in need of protection, as appropriate, in countries other than their country of origin, and shall also undertake such diplomatic efforts as may be necessary to address the problem of illegal migration of aliens in the Caribbean region and to facilitate the return of those aliens who are determined not to be persons in need of protection.

(c)(i) The Secretary of Defense shall make available to the Attorney General and the Secretary of State, for the housing and care of any undocumented aliens interdicted or intercepted in the Caribbean region and taken into their custody, any facilities at Guantanamo Bay Naval Base that are excess to current military needs and the provision of which does not interfere with the operation and security of the base. The Secretary of Defense shall be responsible for providing access to such facilities and perimeter security. The Attorney General and the Secretary of State, respectively, shall be responsible for reimbursement for necessary supporting utilities.

(ii) In the event of a mass migration in the Caribbean region, the Secretary of Defense shall provide support to the Attorney General and the Secretary

of State in carrying out the duties described in paragraphs (a) and (b) of this section regarding the custody, care, safety, transportation, and other needs of the aliens, and shall assume primary responsibility for these duties on a nonreimbursable basis as necessary to contain the threat to national security posed by the migration. The Secretary of Defense shall also provide support to the Coast Guard in carrying out the duties described in Executive Order 12807 of May 24, 1992, regarding interdiction of migrants.

Sec. 2. *Definitions.* For purposes of this order, the term ''mass migration'' means a migration of undocumented aliens that is of such magnitude and duration that it poses a threat to the national security of the United States, as determined by the President.

Sec. 3. *Scope.*

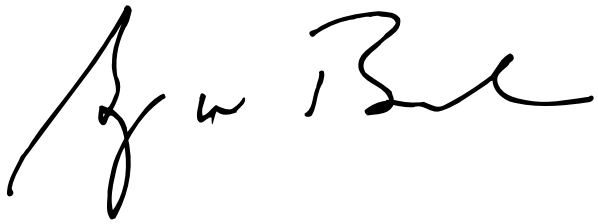
(a) Nothing in this order shall be construed to impair or otherwise affect the authorities and responsibilities set forth in Executive Order 12807 of May 24, 1992.

(b) Nothing in this order shall be construed to make reviewable in any judicial or administrative proceeding, or otherwise, any action, omission, or matter that otherwise would not be reviewable.

(c) This order is intended only to improve the management of the executive branch. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity or otherwise against the United States, its departments, agencies, entities, instrumentalities, officers, employees, or any other person.

(d) Any agency assigned any duties by this order may use the provisions of the Economy Act, 31 U.S.C. 1535 and 1536, to carry out such duties, to the extent permitted by such Act.

(e) This order shall not be construed to require any procedure to determine whether a person is a refugee or otherwise in need of protection.



THE WHITE HOUSE,
November 15, 2002.

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Defense Logistics Agency
Standards of conduct; CFR part removed; published 11-19-02

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Air quality implementation plans; approval and promulgation; various States:
Utah; published 9-20-02

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
California; published 10-22-02

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Federal Aviation Administration
Airworthiness directives:
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Atlantic mackerel, squid, and butterfish; comments due by 11-27-02; published 10-29-02 [FR 02-27506]
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Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
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Air quality implementation plans; approval and promulgation; various States:
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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
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Cyfluthrin; comments due by 11-26-02; published 9-27-02 [FR 02-24653]

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Bexar County, TX, karst-dwelling invertebrate species; comments due by 11-25-02; published 8-27-02 [FR 02-21477]
Conservancy fairy shrimp, etc. (California and Southern Oregon vernal pool crustaceans and plants); comments due by 11-25-02; published 9-24-02 [FR 02-23241]
Plant species from Oahu, HI; comments due by 11-30-02; published 10-10-02 [FR 02-25721]
Slickspot peppergrass; comments due by 11-25-02; published 9-25-02 [FR 02-24363]
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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.

S. 1210/P.L. 107–292

Native American Housing Assistance and Self-Determination Reauthorization Act of 2002 (Nov. 13, 2002; 116 Stat. 2053)

S. 2690/P.L. 107–293

To reaffirm the reference to one Nation under God in the Pledge of Allegiance. (Nov. 13, 2002; 116 Stat. 2057)

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